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# Confronting the Question of Clinical Faculty Status†

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AND  
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*As clinical education has become an accepted part of American legal education, law schools have been asked to enhance the status of clinicians teaching in their clinical programs. The American Bar Association, through its proposed Standard 405(e), would impose clinician job security as a requirement of law school accreditation. This article analyzes the various security arrangements permitted by Standard 405(e), recommends use of the regular tenure track option, and specifies guidelines to be utilized in decisions to hire and tenure clinicians.*

In 1980, the AALS/ABA Joint Committee on Clinical Legal Education Guidelines recommended enhancing the status of clinical law professors.<sup>1</sup> In 1982, the ABA Accreditation Committee recommended that the Council of the Section of Legal Education and Ad-

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† *Editor's note.* This article discusses the differences in opinion between the Association of American Law Schools and the American Bar Association regarding the desirability of adopting proposed Standard 405(e). While this article was being prepared for publication, the two organizations modified their positions to accommodate each other. The A.A.L.S. will not oppose the adoption of a standard which urges but does not mandate that law schools adopt the general policy set forth in proposed Standard 405(e). The A.B.A. Section of Legal Education and Admissions to the Bar will revise proposed Standard 405(e) by substituting the word "should" for "shall." Thus, proposed Standard 405(e) will be couched in aspirational rather than obligatory terms. Letter from Joseph R. Julin, President, Association of American Law Schools to Deans of Member Schools and Members of the House of Representatives, June 29, 1984.

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1. AALS/ABA Joint Committee on Clinical Legal Education Guidelines, Report, Section XVI (January, 1980) as discussed in ABA, Section of Legal Education and Admissions to the Bar, Memorandum D8384-51, 3-4 (May 22, 1984).

missions to the Bar consider amending the ABA law school accreditation standards by adding a new Standard 405(e).<sup>2</sup> As revised, the proposed amendment will be considered for adoption by the ABA House of Delegates in August, 1984. The proposal is directed at establishing job security, economic equality, and a governance voice for clinicians. It requires the following as a condition precedent to accreditation;

Standard 405(e). 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 full-time faculty members by Standards 401, 402(b), 403 and 405. The law school shall require these faculty members to meet standards and obligations reasonably similar to those required of full-time faculty members by standards 401, 402(b), 403 and 405.<sup>3</sup>

The Council recommended that if Standard 405(e) is approved by the House of Delegates, then full compliance with the standard should be required by the commencement of the 1986-87 academic year. In the intervening two years, the Council would require each ABA approved law school to develop a plan to conform with the standard.

The Executive Committee of the AALS believes that clinical legal education is "an important and vital development in legal education"<sup>4</sup> and, therefore, supports the objectives of Standard 405(e). Nevertheless, in a memorandum dated May 17, 1984, the Executive Committee urged that the proposed standard be withdrawn from further consideration at this time.<sup>5</sup> The Executive Committee would permit individual schools to continue their experimentation with various clinical education models, allowing differences in the number, qualifications, and faculty status of individuals providing clinical instruction.<sup>6</sup> They recommend that information be gathered on what schools are doing to accord appropriate status to clinicians and that clinical models be appraised to determine which of them provides the best institutional environment for clinical education.<sup>7</sup>

Both the ABA Council and the AALS Executive Committee favor an enhanced status for clinicians; their dispute is limited to methodology for achieving this result. Thus, whatever the fate of proposed Standard 405(e), law schools will soon be asked to address the issue of appropriate status for clinicians. At the University of San Diego School of Law, a Special Committee was appointed to consider this

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2. Memorandum D8384-51, *id.* at 4.

3. *Id.* at 1.

4. AALS, Statement of the Executive Committee of Association of American Law Schools on Proposed Standard 405(e), ABA Standards for the Approval of Law Schools I (May 17, 1984).

5. *Id.*

6. *Id.* at 3.

7. *Id.*

issue. The Committee was formed to respond both to our own evolving concerns about the status of clinical faculty and to provide a response to proposed Standard 405(e). The Committee's efforts culminated in a report approved by the tenured faculty in May, 1984. The adoption of this report successfully concluded two years of faculty discussion and debate on this important subject.

The authors of this article co-chaired the Special Committee that formulated the recommendations on the status of clinical faculty at the University of San Diego School of Law. This article analyzes our report and recommendations and may provide valuable assistance to other law schools as they begin to focus on the policy considerations underlying Standard 405(e) and the employment options permitted by that standard. We do not examine, however, the financial implications of each option. The Special Committee was not asked to consider this factor as a determining variable. The University administration will assess the financial implications of accepting or rejecting the tenured faculty's action. The University administration may be influenced by the strength of the arguments supporting the tenured faculty's action and by the requirements of our accrediting agencies.

#### THE RENEWABLE LONG-TERM CONTRACT OPTION

In interpreting proposed Standard 405(e), the Council of the Section of Legal Education and Admissions to the Bar stated that both a renewable long-term contract and a separate tenure track constitute forms of security reasonably similar to tenure.<sup>8</sup> Thus, schools will be able to consider and adopt various employment arrangements for complying with Standard 405(e). For example, a policy utilizing renewable long-term contracts could provide for a probationary period followed by termination or continuance in a long-term, renewable contract. The contract could be terminated for good cause, including the elimination or material modification of a school's professional skills program.<sup>9</sup> James White, Consultant to the ABA, and Gordon Schaber, Chair of the ABA Standards Review Committee, expressed their opinion that the long-term contractual arrangement would not conflict with AAUP guidelines on tenure. Those guidelines provide that a person who has been employed by a university as a full-time professor for seven years is entitled to tenure. However, both Dean Schaber and Professor White stated that these guidelines apply only

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8. ABA Standards for Approval of Law Schools, Proposed Standard 405(e), Interpretation A.

9. *Id.*

to persons initially hired on a tenure track and are not applicable to individuals who initially were hired on a non-tenure track arrangement.<sup>10</sup>

Although long-term renewable contracts without possibility of tenure are arguably permissible under Standard 405(e), this arrangement was rejected as an employment device for clinicians at the University of San Diego. At our law school, a number of clinicians are currently employed on fixed-term contracts, renewable for a seven-year maximum. Problems inherent with those contracts are also intrinsic to long-term renewable contracts. There is the problem of defining entitlements. For example, are individuals in such a contractual arrangement authorized to vote on personnel and other matters that are presented to the tenured faculty? If the answer is "no," then clinicians are relegated to a second-class faculty status and their positions are not reasonably similar to those provided to other full-time faculty members. If, however, clinicians are to have the same rights as other tenured faculty, then arguably they should be entitled to regular tenured faculty status. Additionally, the anticipated advantages of a long-term renewable contract may be largely illusory. Although the contract requires that the individual be evaluated periodically—perhaps every three to five years—he or she can only be dismissed for good cause. In essence, the individual has a security arrangement that is similar to that of a tenure track faculty member. In fact, if one assumes that clinical education is a permanent part of legal education, the security of a long-term renewable contract is virtually identical to tenure status and should be rejected in favor of tenure. Finally, the availability of only a long-term, non-tenured contract is likely to disadvantage a law school in its ability to hire the most highly qualified clinicians. Schools should be recruiting the best possible candidates. Accordingly, schools should be willing to provide clinicians with the status necessary to demonstrate that they are welcomed as equal members of the faculty.

#### THE SEPARATE CLINICAL TENURE TRACK OPTION

The creation of a special clinical tenure track is arguably supportable for two fundamental reasons. First, such an arrangement recognizes that clinical faculty status is an appropriate long-term career objective for some faculty members. By establishing a special clinical tenure track, a law school is able to recruit those persons who are motivated by and committed to a career in clinical education. A special clinical tenure track addresses the concern that once hired a cli-

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10. Telephone conversation between Dean Gordon Schaber and Professor Grant Morris, April, 1984; telephone conversation between Professor James White and Professor Grant Morris, April, 1984.

nician might "abandon" the clinic in favor of non-clinical teaching, thereby creating a short-term dislocation in the clinic. Establishing a special track clearly states a school's position that individuals who accept a clinical appointment cannot use such appointment as an indirect method of achieving non-clinical tenure. Thus, those who desire regular tenure status would know that they must seek to be appointed directly to the regular tenure track.

The argument in favor of creating a special tenure track is premised on a desire to hire clinicians who are sincerely interested in pursuing a career in clinical education. This desire is of course reasonable. However, a person's motivation and commitment can be determined prior to hiring, and therefore this concern is not a persuasive basis for creating a special track. Moreover, once a person is hired, the dean has both the authority and obligation to assign teaching responsibilities in accordance with each individual's teaching competence and the needs of the institution. A special clinical track is simply not necessary to accomplish the stated objective of hiring and retaining clinical faculty who are truly committed to clinical education.

The second argument supporting a special clinical tenure track derives from the history of clinical education. Clinical programs have developed along decentralized, autonomous lines. As a result, a sense of program independence within the bounds of our common educational interests and responsibility has developed among clinicians. Arguably, this esprit de corps can be more effectively maintained and nurtured by establishing a special tenure track than by attempting to assimilate clinical faculty through the process of appointing them to regular tenure track positions. Arguably, a special tenure track is more likely to result in a stable and cohesive clinical program.

The "esprit de corps" argument, however, is inadequate to support a special clinical tenure status. Although it is important for clinicians to have the best possible attitude as they perform their tasks, evidence does not exist to support the assertion that the creation of a special tenure track is necessary to accomplish this objective. At the University of San Diego, our current faculty clinicians are employed in several different employment arrangements. They include: regular tenure, special tenure, seven-year maximum non-tenure track, three-year appointment, one semester visitorship, and "soft" money appointment. Our clinicians have interacted positively regardless of the variety of employment arrangements. In a very real sense, esprit de

corps is more a function of the interrelation between people seeking to achieve the common objective of providing a high quality clinical experience, than it is to the particular employment relationship with the university. To the extent that motivation and esprit de corps are issues, use of a regular tenured status option should create the strongest feelings of commitment both to the clinical program and to the institution as a whole.

#### THE REGULAR TENURE TRACK OPTION

##### *Some Advantages and Disadvantages*

Standard 405(e) provides that clinical faculty members are entitled to job security and to substantial equality of treatment in the terms and conditions of their employment. This entitlement is premised on the proposition that clinical education is a permanent part of legal education. The AALS Executive Committee has asserted that clinical legal education is a vital development "that has demonstrated its merit and has gained an important place in legal education."<sup>11</sup> Attempts to enhance the status of clinicians short of granting them regular tenure necessarily create a disparity in status. Individuals employed in less than tenure track arrangements are relegated to second-class status. Typically, they would not be fully involved in personnel decisions or other matters that traditionally come before the tenured faculty.

A number of arguments support inclusion of full-time clinical faculty on a regular tenure track. First, the availability of the regular tenure track appointment is the best way of attracting outstanding clinical faculty members. Any other employment arrangement will be perceived by candidates for clinical positions as undesirable. A difference in status for clinical faculty creates the impression of second-class citizenship for these faculty members. Thus, if a law school offers clinical candidates only special clinical tenure track appointments or long-term contracts, the school will inevitably be placed at a disadvantage in competing for highly qualified clinicians with other schools that offer regular tenure track appointments. Other things being equal, candidates will invariably choose a school offering a regular tenure track appointment over a school offering only a special tenure track appointment or a long-term contract. Thus, to avoid being placed at a competitive disadvantage, law schools should consider using regular tenure track appointments for clinical faculty candidates.

Second, a clinical program should be staffed by individuals who are committed and regularly available to teach in the clinic. To some

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11. AALS, Statement of the Executive Committee, *supra* note 4, at 1.

extent, the creation of a special tenure track or long-term employment contract assures an institution that persons hired as faculty clinicians will be regularly available to teach in the clinic. By limiting a clinician's function at the law school, these employment devices tend to ensure that candidates, when they are hired, are interested in and committed to clinical education. Nevertheless, the general objective of assuring that the clinical program is not jeopardized because of inadequate staffing can also be accomplished by appointing clinical candidates to a regular tenure track. A law school dean has inherent authority to assign personnel to teaching responsibilities in accordance with the individual's area of teaching competence and the needs of the institution. Thus, the argument that adequate clinical staffing can only be assured by using a special tenure track or a long-term clinical contract is not compelling. Persons hired to the regular tenure track with special clinical qualifications can and should be informed of their expected commitment to the clinic.

Attempting to guarantee that persons hired for the clinic permanently remain in the clinic is not only unrealistic, but it also may be undesirable from a policy perspective. A highly qualified person who desires a respite from a clinical assignment ought not be put to the unenviable choice of giving up his or her job or remaining in an unsatisfactory situation. Neither of these choices is desirable from the perspective of either the faculty member or the institution. Moreover, the scope of clinical education and a school's expectations of clinical faculty are likely to change. A special tenure track utilizing distinctive criteria based on present conceptions of clinical education ultimately provides an institution substantially less flexibility to deal with change or the potential for change than regular tenure track appointments.

Hiring candidates committed to a career in clinical legal education can be accomplished by evaluating their commitment and interest before they are hired. Although ascertaining a person's career objectives does not guarantee that the person's attitudes and interests will remain unchanged, neither does placing a person on a special tenure track or long-term contract create such a guarantee. A person's interests may change irrespective of his or her employment arrangement.

Some non-clinical faculty members may be interested in teaching clinical courses. Similarly, some clinical faculty may be interested in teaching non-clinical courses. As a general matter, these interests are institutionally desirable and should be encouraged. However, cli-

nicians may not be permitted to teach non-clinical courses if they are employed on a special clinical tenure track or long-term contract. The teaching of non-clinical courses may be viewed as inconsistent with the clinician's special status. Moreover, assigning a clinician to a non-clinical course may raise a jurisdictional issue of whether such assignment is a faculty appointments matter requiring faculty approval or whether it is simply an administrative matter within the dean's discretion. Therefore, by placing clinicians on a regular tenure track, a school will be able to facilitate interchanges and rotation when they are thought to be in the best interests of the institution. Additionally, if clinicians are viewed as having an inferior status, fewer regular faculty members may be encouraged to enrich their teaching through a clinical experience.

Finally, and most significantly, the availability of a regular tenure track appointment for clinicians is the best way, and in the opinion of some, the only way to assure equal status for clinicians. Inequality exists when some members of a faculty have limited voting rights (such as may occur on decisions involving appointment and tenure), have significantly different salaries, or are denied faculty perquisites such as sabbatical leave and research assistants. A policy of appointing clinicians to a regular tenure track eliminates the differences between faculty members and promotes the inherent equality of clinical and non-clinical faculty members.

#### *Recommended Hiring Policy for Clinicians Appointed to the Regular Tenure Track*

Regular tenure for clinicians is appropriate even if the qualifications of those hired to teach in the clinic differ somewhat from those who are hired to teach traditional law school courses. To the extent legitimate differences in hiring qualifications exist, they can be recognized in designing the selection criteria for hiring clinical faculty appointed to the regular tenure track.

Law schools utilizing the regular tenure track option for hiring clinicians should view those appointments as they would appointments for any other tenure track position on the faculty. Thus, the school should attempt to attract an outstanding clinician for appointment to the regular tenure track position. Typically, the school should conduct a nationwide search to recruit the most qualified person. As with other tenure track appointments, the clinician should possess academic credentials similar to those possessed by non-clinical faculty members. Requiring similar academic credentials furthers three objectives: first, it assures that the clinicians hired are of the highest possible quality; second, it affirms the institutional commitment to having the clinical faculty fully participate in the intellectual life of the law school community, and third, it reinforces

the inherent equality of status for all tenured faculty members.

Another criterion for appointment is qualitatively significant lawyering experience. This requirement helps assure that the person appointed will be an appropriate role model for students and that the candidate possesses the requisite level of lawyering skills to teach in the clinic. Because clinicians typically have responsibility for supervising students engaged in the practice of law, a school may require that the individual hired be either a member of the state bar or obtain bar membership within a reasonable period after commencing employment. A person hired in February or March for a position that begins in August or September should be able to take the state's bar examination prior to beginning employment or shortly thereafter.

As stated previously, in recruiting clinicians for regular tenure track positions, the faculty must assess whether candidates are sincerely interested in and committed to a long-term career in clinical education. Candidates must understand that their primary responsibilities will be in the professional skills program. Although a special clinical tenure track is not necessary to achieve this result, before clinicians are hired for regular tenure track positions they should be notified of the faculty's expectations and should agree to the scope of their responsibilities. This understanding should be clearly stated in the job description, faculty rules or handbook, and the faculty member's contract.

### *Recommended Tenure Policy for Clinicians Appointed to the Regular Tenure Track*

Typically, the conferral of tenure is based on three criteria: teaching, scholarship, and service to the university, profession and community. These criteria also are appropriate for clinicians hired to a regular tenure track. Proposed Standard 405(e) recognizes that clinical faculty, whether hired on a regular tenure track, a special tenure track, or long-term contract, are expected to contribute to the law school in all three areas. Specifically, Standard 405(e) states: "The law school shall require these faculty members to meet standards and obligations reasonably similar to those required of full-time faculty members by Standards 401 [and] 402(b). . . ."<sup>12</sup> Standard 401 requires faculty members to "possess a high degree of competence, as demonstrated by education, classroom teaching ability,

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12. ABA, Standards for Approval of Law Schools, Proposed Standard 405(e).

experience in teaching or practice, and scholarship research and writing.”<sup>13</sup> Standard 402(b) states: “A full-time faculty member is one who during the academic year devotes substantially all working time to teaching and legal scholarship. . . .”<sup>14</sup> Because clinicians are full-time, permanent members of the law school faculty, scholarly research and writing must be viewed as an integral component of a clinician’s activity. David H. Vernon, speaking as 1983 President of the AALS, asserted that a scholarship requirement imposed on all clinicians would displace some good clinical teachers.<sup>15</sup> Nevertheless, we believe that good clinical teachers who also are committed to scholarship can be recruited if they are given economic and status parity with nonclinical faculty members.

We realize that the scholarship produced by clinicians may differ, somewhat, from the scholarship produced by non-clinical faculty. An ABA interpretation of Standard 405(e) provides, “[C]ompetence in the areas of teaching and scholarly research and writing [for full-time faculty in the professional skills program] should be judged in terms of the responsibilities of faculty members in the professional skills program.”<sup>16</sup> So long as the faculty requires high quality scholarship from all its tenure track faculty, these differences can be accommodated without a diminution in standards.

Of course, if clinicians are expected to engage in scholarly research and writing, their work assignments must be designed to allow time for such activity. As with other tenured and tenure-track faculty, clinicians also should be able to apply for and receive reduced teaching loads in order to complete major research undertakings. At the University of San Diego, we do not anticipate that the need to provide time for scholarship will necessitate expanding our clinical staff or reducing our present clinical programs.

Law schools need to reexamine their existing rank and tenure policies to determine whether they establish criteria that are, or can be interpreted as being, appropriately applicable to clinicians. The Special Committee recommended that the tenured faculty adopt guidelines, outlined below, to explain how our existing tenure criteria apply to clinicians who hold regular tenure track appointments.

#### Teaching:

The various aspects of effective clinical teaching include:

(a) conducting individual student conferences, including critical review, evaluation and feedback of a student’s intellectual skills and

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13. *Id.* Standard 401.

14. *Id.* Standard 402(b).

15. David H. Vernon, The President’s Address 5 (AALS, January 1983).

16. ABA, Standards for Approval of Law Schools, Proposed Standard 405(e), Interpretation B.

knowledge for the purpose of assisting the student to realize his or her individual abilities;

(b) conducting any clinical classroom component;

(c) using and integrating clinical methodology, such as simulations, actual cases, outplacements and seminars, to provide students with an understanding of legal process and lawyering skills;

(d) engaging in effective, professional and innovative advocacy and other client representation skills in order to provide students with a model of professional conduct;

(e) improving clinical teaching methodology through refinement, development or new applications; and

(f) fostering a successful learning environment, through being accessible to students, interested and involved in their development and welfare, intellectually stimulating and inspiring to students in their clinical studies, and when it is part of the professor's assigned duties, administering the clinical program or aspects of the clinical program.

#### Scholarship:

Scholarship consists of the publication of books, articles in law reviews, articles in other scholarly journals relating to law, legal education or related areas, theoretical or empirical research relating to clinical studies and/or their relationship to the legal process, or any other written product that is appropriate to the area in which the individual clinician is teaching, such as proposed legislation or model jury instructions. Scholarship is broadly defined, and includes any writing that evidences useful insights into the nature of legal problems. Thus, practice-oriented material may be considered for scholarship purposes if it involves a high quality analysis and development of legal issues.

#### University, Professional, or Community Service:

This service includes participation in the full range of law school and University activities that is expected of faculty members generally, including appropriate service on University committees, faculty committees and attendance at meetings, and availability to students and other programs (such as Law Review and Moot Court) to assist in meeting their needs. Outside the University, it includes all professional contributions, including activities or service in connection with a professional, community or governmental organization.

## *The Transition Process*

The creation of long-term security arrangements for clinicians directly affects non-tenured persons currently employed in the school's legal clinic. The enhanced status of these new positions makes them more attractive to individuals entering law teaching. Hence, recruitment of highly qualified clinicians should be possible. Nevertheless, recruitment efforts for tenure track appointments should also include consideration of clinicians currently on the faculty. The following guidelines are presented to deal with the difficult issues accompanying the transition process.

First, the law school must honor its commitments to all individuals presently teaching in the legal clinic. The creation of new regular tenure track positions should not be achieved over the legitimate rights and expectations of individuals currently employed. Thus, new tenure track positions should only become available when existing clinical contracts expire or a clinical vacancy otherwise occurs.

Second, when a regular tenure track position becomes available for someone with clinical faculty qualifications, the position should be advertised nationally and regular faculty recruitment policies should apply. Any clinical faculty member whose fixed-term contract has just expired (thereby creating a vacancy) or whose contract has not yet expired, should automatically be considered for the new tenure track position when it becomes available, unless he or she expresses a desire not to be considered. Consideration of a clinical faculty member for a regular tenure track appointment should not jeopardize or affect adversely his or her existing term of appointment. Although the faculty may appropriately consider the clinician's experience at the law school, clinicians currently or previously employed at the school should have no vested claim to the new position and should not be given priority consideration for the new position on the basis of their law school affiliation. All candidates for the position should be judged solely on the merits of their qualifications.

Third, if a clinician currently on the faculty is hired for the tenure track position, he or she should not receive automatic credit for past teaching experience at the law school. When the person is hired for the new tenure track position, the faculty should determine how much credit, if any, should be given for years of service at that law school or elsewhere. Unless the faculty acts affirmatively to grant credit, no credit should be given for past experience.

### SHORT-TERM APPOINTMENTS

Although Standard 405(e) focuses primarily on the need to establish long-term security arrangements for clinicians, such arrangements are not required to be utilized exclusively. The ABA Council

has interpreted the Standard to permit "a limited number of fixed, short-term appointments in a professional skills program so long as the program is predominantly staffed by full-time faculty members within the meaning of this standard."<sup>17</sup> The use of some short-term contracts to staff clinical positions appears desirable. They enable law schools to retain a degree of flexibility in dealing with modifications in the clinical program. For example, our faculty recently adopted, on an experimental basis, a required course entitled Legal Practice. This course will require substantial involvement of our clinical faculty, and perhaps, some of our non-clinical faculty as well. We do not know, even in the short run, whether this experiment will be successful. We do not know whether additional skills offerings will be approved, or whether skills components will be added to existing courses in our curriculum. In the future, the faculty may even wish to condense or eliminate some of these offerings. By utilizing short-term appointments to staff clinical offerings, our school can easily accommodate to the changing situation.

Short-term appointments also enable law schools to take advantage of new hiring opportunities. For example, a school may wish to hire a visiting clinician from another university on a one-year basis. Such an appointment would enable the school to enrich its clinical faculty just as the non-clinical faculty is enriched with visiting appointments. Additionally, many law firms have adopted sabbatical leave policies for their partners. The availability of short-term appointments may facilitate recruitment of a highly qualified practitioner for a semester or two.

Short-term appointments should be governed by the following guidelines:

1. All initial short-term appointments should be for a maximum duration of one year.
2. During the initial appointment period, the tenured faculty should decide whether the person will be reappointed. Each reappointment should be for a maximum of one year. The maximum duration of any short-term appointment arrangement, including the initial term and any subsequent reappointments, should be established at three or four years. This maximum is recommended for several reasons. First, term appointment positions do not have any scholarship requirement, and therefore, these positions should not be encumbered for too lengthy a period of time. Second, if a tenure-track

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17. *Id.*, Interpretation C.

position becomes available, an individual holding a term appointment longer than three years may have an unfair advantage in competing with other candidates for that position. Third, a shorter maximum period for term appointments should ease the transition back into practice for term appointees at the completion of their appointment.

3. Persons whose one year appointments begin in the fall semester and who are subject to reappointment should have their performance evaluated by the tenured faculty during the fall semester, and they should be informed of the reappointment decision for the following year no later than December 15. When the faculty decides not to reappoint a person on a short-term contract, the person's employment should terminate at the end of the contractual term and should not be extended for an additional year. However, if the short-term appointee has been employed consecutively for two or more years on a term contract, he or she should receive twelve months notice, in accordance with AAUP guidelines.

4. The minimal criteria for reappointment to a short-term position should be effective teaching and university, professional or community service as defined for tenure track appointees.

5. A faculty decision to convert a short-term appointment position into a regular tenure track appointment position should be a basis for not reappointing a person on a short-term appointment at the completion of the existing contract. The short-term appointee may request to be considered for that tenure track position along with all other candidates. However, the short-term appointee should not be accorded any preference over other candidates based solely on the short-term appointment status.

6. Prior to hiring, candidates for short-term appointment positions should be informed of the policies governing short-term appointments articulated above. Therefore, these terms should be included in the faculty rules or handbook and appended to the employment contract.

#### CONCLUSION

Clinical education is an integral component of American legal education. It is accepted and supported by the ABA and the AALS. By requiring law schools to enhance the status of clinicians, proposed Standard 405(e) also attempts to enhance clinical legal education as well.

The fate of this initiative is uncertain. Resistance to it may be based on a variety of concerns. Some schools may conclude that teachers currently employed in their clinical programs do not merit

long-term job security.<sup>18</sup> Some law school and university administrations may be reluctant to increase the number of tenure track positions at a time when law schools face a decline in student applications and a curtailment in student financial aid.<sup>19</sup> Schools may also be concerned about fundamental changes in the structure of clinical education. In some law schools, client contact has been reduced in favor of more simulation and integration of clinical methodologies into traditional offerings. The uncertain direction of clinical education generates reluctance to grant tenure to clinicians. Some educators believe that the accreditation process is not the appropriate way to achieve job security and improve clinicians' status. They believe proposed Standard 405(e) jeopardizes institutional diversity and creativity in the development of clinical and skills training programs.<sup>20</sup>

These concerns are not without merit. Nevertheless, we believe that they are focused primarily on short-term, transitional considerations that do not adequately assess the importance of clinical legal education in American law schools both today and in the foreseeable future. If clinical legal education is to thrive and mature as a vital educational development, outstanding clinicians must be recruited to law school faculties and accepted as full-fledged members of those faculties. The policies recently adopted at the University of San Diego accept these premises and offer us the opportunity to improve significantly the quality of clinical legal education at our school.

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18. AALS, Memorandum 84-36, at 3 (May 23, 1984).

19. *Id.*

20. *Id.*

