American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Chapter 4 - THE FACULTY

REDLINED -- DRAFT after July 2011 Meeting

Strike-outs and underlines show changes from the current standards.

Standard 106. DEFINITIONS

(_#_) "Full-time faculty member" means ~~(b) A full-time faculty member is one~~ an individual whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404~~(a)~~, and whose outside professional activities, if any, ~~are limited to those that relate to major academic interests or enrich the faculty member's capacity as a scholar and teacher, are of service to the legal profession and the public generally, and~~ do not unduly interfere with ~~one's~~ his or her responsibility as a faculty member.

Standard 401. QUALIFICATIONS

A law school shall have a faculty whose qualifications and experience are appropriate to the stated mission of the law school and to ~~maintaining~~ carrying out a program of legal education consistent with the requirements of Standards 301, 302 and 303. The faculty shall possess a high degree of competence, as demonstrated by its education, experience in teaching or practice, teaching effectiveness and ~~scholarly research and writing.~~ scholarship.

Standard 402. SIZE OF ~~FULL TIME~~ FACULTY

~~(a)~~ A law school shall have a sufficient number of ~~full-time~~ faculty to fulfill the requirements of the Standards, ~~and meet the goals of~~ carry out its educational program. ~~The number of full-time faculty necessary depends on:~~ and provide for the stability and ongoing quality of its instructional programs.

> **~~(1) the size of the student body and the opportunity for students to meet individually with and consult faculty members;~~**
>
> **~~(2) the nature and scope of the educational program; and~~**
>
> **~~3) the opportunities for the faculty adequately to fulfill teaching obligations, conduct scholarly research, and participate effectively in the governance of the law school and in service to the legal profession and the public.~~**

~~**(b) A full-time faculty member is one whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404(a), and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member's capacity as a scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one's responsibility as a faculty member.**~~

Interpretation 402-1

Demonstrating the required adequacy of the size of the faculty should take into consideration such matters as the quality of teaching, class size, availability of small group classes and seminars, student/faculty contact, examinations and grading, scholarly contributions, public service, discharge of governance responsibilities, identifying and assessing student learning outcomes, and the ability of the law school to carry out its announced mission.

~~***Interpretation 402-1***~~

~~*In determining whether a law school complies with the Standards, the ratio of the number of full-time equivalent students to the number of full-time equivalent faculty members is considered.*~~

~~*(1) In computing the student/faculty ratio, full-time equivalent teachers are those who are employed as full-time teachers on tenure track or its equivalent who shall be counted as one each plus those who constitute "additional teaching resources" as defined below. No limit is imposed on the total number of teachers that a school may employ as additional teaching resources, but these additional teaching resources shall be counted at a fraction of less than 1 and may constitute in the aggregate up to 20 percent of the full-time faculty for purposes of calculating the student/faculty ratio.*~~

> ~~*(A) Additional teaching resources and the proportional weight assigned to each category include:*~~
>
> > ~~*(i) teachers on tenure track or its equivalent who have administrative duties beyond those normally performed by full-time faculty members: 0.5;*~~
> > ~~*(ii) clinicians and legal writing instructors not on tenure track or its equivalent who teach a full load: 0.7; and*~~
> > ~~*(iii) adjuncts, emeriti faculty who teach, non-tenure track administrators who teach, librarians who teach, and teachers from other units of the university: 0.2.*~~
>
> ~~*(B) These norms have been selected to provide a workable framework to recognize the effective contributions of additional teaching resources. To the extent a law school has types or categories of teachers not specifically described above, they shall be counted as appropriate in accordance with the weights specified above. It is recognized that the designated proportional weights may not in all cases reflect the contributions to the law school of particular teachers. In exceptional cases, a school may seek to demonstrate to site evaluation teams and the Accreditation Committee that these proportional weights should be changed to weigh contributions of individual teachers*~~

~~*(2) For the purpose of computing the student/faculty ratio, a student is considered full-time or*~~

~~*part-time as determined by the school, provided that no student who is enrolled in fewer than ten credit hours in a term shall be considered a full-time student, and no student enrolled in more than 13 credit hours shall be considered a part-time student. A part-time student is counted as a two-thirds equivalent student.*~~

~~*(3) If there are graduate or non-degree students whose presence might result in a dilution of J.D. program resources, the circumstances of the individual school are considered to determine the adequacy of the teaching resources available for the J.D. program.*~~

~~***Interpretation 402-2***~~
~~*Student/faculty ratios are considered in determining a law school's compliance with the Standards.*~~

~~*(1) A ratio of 20:1 or less presumptively indicates that a law school complies with the Standards. However, the educational effects shall be examined to determine whether the size and duties of the full-time faculty meet the Standards.*~~

~~*(2) A ratio of 30:1 or more presumptively indicates that a law school does not comply with the Standards.*~~

~~*(3) At a ratio of between 20:1 and 30:1 and to rebut the presumption created by a ratio of 30:1 or greater, the examination will take into account the effects of all teaching resources on the school's educational program, including such matters as quality of teaching, class size, availability of small group classes and seminars, student/faculty contact, examinations and grading, scholarly contributions, public service, discharge of governance responsibilities, and the ability of the law school to carry out its announced mission.*~~

~~***Interpretation 402-3***~~
~~*A full-time faculty member who is teaching an additional full-time load at another law school may not be considered as a full-time faculty member at either institution.*~~

~~***Interpretation 402-4***~~
~~*Regularly engaging in law practice or having an ongoing relationship with a law firm or other business creates a presumption that a faculty member is not a full-time faculty member under this Standard. This presumption may be rebutted if the law school is able to demonstrate that the individual has a full-time commitment to teaching, research, and public service, is available to students, and is able to participate in the governance of the institution to the same extent expected of full-time faculty.*~~

Standard 403. INSTRUCTIONAL ROLE OF FACULTY

(a) The full-time faculty shall teach substantially all of the first one-third of each student's course work, and more than half of all of the credit hours offered or two thirds of student contact hours.

(a) The full-time faculty shall teach ~~the major portion of the law school's curriculum~~ ~~including~~ substantially all of the first one-third of each student's coursework, and more than half of all of the credit hours offered or two thirds of student contact hours,

(b) A law school shall ensure effective teaching by ~~all persons providing instruction to students~~ providing appropriate orientation, guidance, mentoring, faculty development and periodic evaluation of its full-time and part-time faculty members.

~~(c) A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program. Appropriate use of practicing lawyers and judges as faculty requires that a law school shall provide them with orientation, guidance, monitoring, and evaluation~~.

~~***Interpretation 403-1***~~
~~*The full-time faculty's teaching responsibility will usually be determined by the proportion of student credit hours taught by full-time faculty in each of the law school's programs or divisions (such as full-time, part-time evening study, and part-time weekend study). For purposes of Standard 403(a), a faculty member is considered full-time if that person's primary professional employment is with the law school.*~~

Interpretation ~~403-2~~ 403-1
Efforts to ensure teaching effectiveness may include: a faculty committee on effective teaching, class visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, colloquia on effective teaching, and recognition of creative scholarship in law school teaching methodology. ~~A law school shall provide all new faculty members with orientation, guidance, mentoring, and periodic evaluation~~.

Standard 404. RESPONSIBILITIES OF FULL-TIME FACULTY

(a) A law school shall ~~establish~~ provide written policies with respect to ~~a~~ full-time faculty members' ~~member's~~ responsibilities. The policies shall require that the faculty, as a collective body, fulfill these core responsibilities: ~~in teaching, scholarship, service to the law school community, and professional activities outside the law school . The policies need not seek uniformity among faculty members, but should address:~~

> **(1) ~~Faculty~~ ~~T~~teaching~~, responsibilities, including carrying a fair share of the law school's course offerings~~ keeping abreast of developments in their specialties, preparing for classes, being available for student consultation, participating in academic advising, ~~and~~ creating an atmosphere in which students and faculty may voice opinions and exchange ideas and assessing student learning;**
>
> **(2) Engaging in scholarship, as defined by each law school; ~~Research and scholarship, and integrity in the conduct of scholarship, including appropriate use of student research assistants, acknowledgment of the contributions of others, and responsibility~~**

~~of faculty members to keep abreast of developments in their specialties;~~

(3) Service ~~Obligations~~ to the law school and university community, including participation in the governance of the law school and other institutional responsibilities described in Standard 201(b);

(4) ~~Obligations~~ Service to the profession, including working with the practicing bar and judiciary to improve the profession; ~~and~~

(5) ~~Obligations~~ Service to the public, including participation in pro bono activities; and

(6) Any other contribution deemed important by the law school for the achievement of its mission.

(b) The law school shall evaluate periodically the extent to which each faculty member discharges his or her responsibilities under its policies. ~~adopted pursuant to Standard 404(a).~~

Standard 405. PROFESSIONAL ENVIRONMENT
[Current Standard]
[For a discussion of the alternative approaches under consideration by the Standards Review Committee, see Attachment A.]

(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 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 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 302(a)(3), and (2) safeguard academic freedom.

Interpretation 405-1
A fixed limit on the percent of a law faculty that may hold tenure under any circumstances violates

the Standards.

Interpretation 405-2
A law faculty as professionals should not be required to be a part of the general university bargaining unit.

Interpretation 405-3
A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty.

Interpretation 405-4
A law school not a part of a university in considering and deciding on appointment, termination, promotion, and tenure of faculty members should have procedures that contain the same principles of fairness and due process that should be employed by a law school that is part of a university. If the dean and faculty have made a recommendation that is unfavorable to a candidate, the candidate should be given an opportunity to appeal to the president, chairman, or governing board.

Interpretation 405-5
If the dean and faculty have determined the question of responsibility for examination schedules and the schedule has been announced by the authority responsible for it, it is not a violation of academic freedom for a member of the law faculty to be required to adhere to the schedule.

Interpretation 405-6
A form of security of position reasonably similar to tenure 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 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 faculty. A law school should develop criteria for retention, promotion, and security of employment of full-time clinical faculty.

Interpretation 405-8
A law school shall afford to full-time clinical faculty members participation in faculty meetings, 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.

Chapter 4 - THE FACULTY

CLEAN COPY -- DRAFT after July 2011 Meeting

Standard 106. DEFINITIONS

(_#_) "Full-time faculty member" means an individual whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404, and whose outside professional activities, if any, do not unduly interfere with his or her responsibility as a faculty member.

Standard 401. QUALIFICATIONS

A law school shall have a faculty whose qualifications and experience are appropriate to the stated mission of the law school and to carrying out a program of legal education consistent with the requirements of Standards 301, 302 and 303. The faculty shall possess a high degree of competence, as demonstrated by its education, experience in teaching or practice, teaching effectiveness and scholarship.

Standard 402. SIZE OF FACULTY

A law school shall have a sufficient number of faculty to fulfill the requirements of the Standards, carry out its educational program and provide for the stability and ongoing quality of its instructional programs.

Interpretation 402-1
Demonstrating the required adequacy of the size of the faculty should take into consideration such matters as the quality of teaching, class size, availability of small group classes and seminars, student/faculty contact, examinations and grading, scholarly contributions, public service, discharge of governance responsibilities, identifying and assessing student learning outcomes, and the ability of the law school to carry out its announced mission.

Standard 403. INSTRUCTIONAL ROLE OF FACULTY

(a) The full-time faculty shall teach substantially all of the first one-third of each student's course work, and more than half of all of the credit hours offered or two thirds of student contact hours.

(b) A law school shall ensure effective teaching by providing appropriate orientation, guidance, mentoring, faculty development and periodic evaluation of its full-time and part-time faculty members.

Interpretation 403-1
Efforts to ensure teaching effectiveness may include: a faculty committee on effective teaching, class

visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, colloquia on effective teaching, and recognition of creative scholarship in law school teaching methodology.

Standard 404. RESPONSIBILITIES OF FULL-TIME FACULTY

(a) A law school shall provide written policies with respect to full-time faculty members' responsibilities. The policies shall require that the faculty, as a collective body, fulfill these core responsibilities:

> **(1) Teaching, keeping abreast of developments in their specialties, preparing for classes, being available for student consultation, participating in academic advising, creating an atmosphere in which students and faculty may voice opinions and exchange ideas and assessing student learning;**
>
> **(2) Engaging in scholarship, as defined by each law school;**
>
> **(3) Service to the law school and university community, including participation in the governance of the law school and other institutional responsibilities described in Standard 201(b);**
>
> **(4) Service to the profession, including working with the practicing bar and judiciary to improve the profession;**
>
> **(5) Service to the public, including participation in pro bono activities; and**
>
> **(6) Any other contribution deemed important by the law school for the achievement of its mission.**

(b) The law school shall evaluate periodically the extent to which each faculty member discharges his or her responsibilities under its policies.

Standard 405. PROFESSIONAL ENVIRONMENT
[For a discussion of the alternative approaches under consideration by the Standards Review Committee, see Attachment A.]

Reporter's Notes

[N.B. These Notes reflect the SRC discussion through July 2011.]

In addition to receiving a report from the Special Committee on Outcome Measures, the Council also received a report from the Special Committee on Security of Position in summer 2008.1 The SRC was directed to respond to that report and its discussion is reflected in Appendix B. At the time of this draft, August 31, 2011, the SRC has not concluded its discussion of security of position. Security of position, or terms and conditions of employment, appear in the Standards in several places affecting deans, the faculty, legal research and writing personnel, clinicians, and law library directors.

To the extent that issues surrounding security of position concern faculty, the SRC reviewed and proposes a redraft of the definition of "full-time faculty member" as it appears in Standard 106. The proposed redraft attempts to broaden the definition and treats as full-time faculty those individuals whose primary professional employment is with a law school and who devote substantially all their working time during the academic years to the types of responsibilities described in Standard 404. In addition, a full-time faculty member may have outside professional activities as long as they do not unduly interfere with their responsibilities. This redraft deletes references to a faculty member's academic interests or to his or her capacity as a scholar or teacher.

Proposed Standard 401 *Qualifications* remains largely unchanged. A law school shall have a faculty with qualifications and experience appropriate to the law school's mission and capable of "carrying out" the law school's program of legal education consistent with the requirements of Standards 301 and 302 with the addition of the requirements in Standard 303. The SRC also proposes substituting the word "scholarship" for the phrase "scholarly research and writing."

The SRC proposes a redraft of Standard 402 *Size of Faculty*. The first proposed change concerns the title of the Standard and the committee recommends deleting "Full-Time" and leaving the title "Faculty." The intent behind the proposal is that law schools utilize a wide array of full-time and part-time faculty and that array can assist the school in carrying out its educational program. The SRC recommends adding language to Standard 402 that requires a law school to maintain a faculty sufficient to provide stability and ongoing quality of instruction.

The SRC proposes eliminating the remaining language in current Standard 402 (a) and in 404 (b) and addressing the issues contained in that language in the Interpretations.

Proposed Interpretation 402-1 addresses the number of full-time faculty and states that the number of full-time faculty should depend upon the size of the student body as well as be of sufficient size to provide: (1) opportunities for students to meet individually with faculty members; (2) small classes and seminars; and (3) the ability to assess student learning outcomes. The size of the faculty should also relate to the mission of the school, the nature and scope of the educational program, and

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1 *Report of Special Committee on Security of Position* (May 5, 2008) available at http://www.abanet.org/legaled/committees/subcomm.html.

the ability of the faculty to fulfill their responsibilities. Language from Interpretation 402-2(3) has been incorporated into proposed Interpretation 402-1 regarding the adequacy of the faculty.

The SRC recommends eliminating current Interpretations 402-1 and 402-2 which set out requirements for law schools to compute a student-faculty ratios. The committee was of the belief that these calculations vary widely from school to school and are generally unreliable. Instead, then, of setting a student-faculty ratio that satisfies the Standards, the size of the faculty is linked to the size of the student body and to a school's educational program.

The SRC also recommends deleting current Interpretation 402-3 regarding teachers teaching full loads at other institutions and Interpretation 402-4 regarding faculty who regularly engage in law practice. The definition of “full-time faculty” in proposed Standard 106 is intended to address these issues.

The SRC proposes some change to Standard 403 *Instructional Role of Faculty*. Proposed Standard 403 (a) is clarified by requiring that full-time faculty shall teach "more than half of all of the credit hours offered or two thirds of student contact hours" rather than "the major portion of law school’s curriculum." The distinction between contact and credit hours depends on the system used be the law school. The subsection retains the direction that full-time faculty shall can teach substantially all of the first one-third of each student’s coursework.

Proposed Standard 403 (b) expands the notion of "effective teaching" by requiring, in addition to instruction, that law schools provide appropriate orientation, guidance, mentoring, faculty development, and periodic evaluation of all full and part-time faculty members.

The SRC recommends the deletion of 403 (c) regarding the use of practicing lawyers and judges as unnecessary. Law schools may, of course, use practicing lawyers and judges to deliver instruction, however the obligations of full-time faculty are set out in this Chapter.

The SRC proposes the deletion of Interpretation 403-1 as unnecessary and as it is addressed in the Standard itself. The committee recommends a redraft of current Interpretation 403-2. The recommendation is to eliminate the last sentence of that interpretation regarding faculty orientation, guidance, and mentoring as covered in proposed Standard 403 (b).

The SRC proposes few changes to Standard 404 *Responsibilities of Full-Time Faculty*. Proposed Standard 404 (a) requires that a law school “provide written policies" to full-time faculty members regarding their responsibilities. The policies shall require that the faculty, as a collective body, fulfill core responsibilities including: (1) teaching and keeping abreast of developments in a faculty's area of specialization, preparing for class, being available for students, and participating in academic advising as well as assess student learning; (2) engaging in scholarship, as defined by each law school; (3) participating in service to the law school and to the university as well as other institutional responsibilities described in Standard 201 (b); (4) providing service to the profession; (5) engaging in service to the public including pro bono activities; and (6) any other contribution deemed important by the law school for the achievement of its mission. The SRC determined that proposed

Standard 404(a)(2) should explicitly state that the definition of Scholarship should be left to each law school.

The SRC proposes retaining Standard 404 (b) requiring a law school to periodically evaluate the extent to which each faculty member discharges his or her responsibilities.

Attachment A

Standard 405. PROFESSIONAL ENVIRONMENT

This Attachment includes copies of the two alternative approaches under consideration by the Standards Review Committee on Standard 405. The text of the two alternatives is followed by a chart that provides a side by side comparison of the alternatives. A brief discussion precedes the alternatives.

The document entitled "Alternative Drafts for Discussion Post July 2011" (hereafter "Alternatives Drafts" document) comes out of a deep discussion in the July 2011 meeting that began with acknowledgement of a general consensus within the committee on three issues relating to professional environment, or terms and conditions of employment: first, that the general requirement that the law school shall establish and maintain conditions adequate to attract and retain a competent faculty is appropriate; second, that the more robust protection of academic freedom provided in the several alternatives under consideration was a significant and valuable improvement; and third, that broader language concerning faculty governance that would be applicable to all full-time faculty members was appropriate and helpful.

The difficult issue, which has divided both the committee and the legal education community, concerns security of position and its role in both attracting and retaining competent faculty and protecting academic freedom. It has been observed that in no other professional education environment do accreditation standards require security of position, though all have similar attract and retain requirements, academic freedom protections, and governance requirements. On the other hand, some have argued that legal education is different from medicine, architecture, or other professional fields, and that in legal education, academic freedom cannot be adequately protected without the underpinning of security of position.

The debate has been robust and at times heated and divisive. The committee recognized that from a high level view of the playing field, four possible approaches to the issue of security of position could be discerned:

1. To make no change from the current Standards;
2. To tweak the current Standards;
3. To broaden the protection of security of position provided in the current Standards; or
4. To remove any requirement of security of position.

There was a general agreement among committee members during the first day of the July 2011 meeting that the current Standards are not clear and that it is the committee's responsibility in this comprehensive review of the Standards to make improvements where needed. So the approach of leaving the Standards as is was rejected. There was also a consensus that a mere tweaking of the current Standards was insufficient. The committee agreed that options three and four, above, deserved further consideration. Option four is reflected in the draft supported by a majority of the

subcommittee. Option three has been reflected in the Wolf/Barry draft presented by a minority of the subcommittee, as well as in proposals from external groups that vary in the breadth of protection provided, but have in common a desire to provide some level of security of position to a broader range of faculty.

The committee had an in depth discussion of option three, and reached some tentative agreement about what option three should look like. This led to a draft of new language that was considered the second day of the July meeting. That discussion led to further refinements after the July meeting that are now reflected in Alternative 2 of the "Alternative Drafts" document.

While the committee did not resolve the question of which of these two alternatives it preferred, and has not seen the latest version of Alternative 2, there was general agreement that these two alternatives would present the Council with the information the Council needed to debate the issue and make a decision.

Standard 405. PROFESSIONAL ENVIRONMENT

Alternative Drafts for Discussion Post July 2011

Alternative 1

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions that are adequate to attract and retain a competent full-time faculty sufficient to accomplish its mission.

(b) A law school shall have a written policy and procedures that provide protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs, and in pursuing their research activities, governance responsibilities, and law school related public service activities.

(c) A law school shall have an announced and written comprehensive system for evaluating candidates for promotion, termination, tenure and renewal of contracts or other forms of security of position.

(d) A law school shall have a policy that provides for meaningful participation of all full time faculty members in the governance of the school.

Interpretation 405-1
A system of tenure earning rights, while not required, can be an effective method of attracting and retaining a competent full time faculty. For full-time faculty positions that do not include the possibility of a tenured appointment, the law school bears the burden of showing that it has established sufficient conditions to attract and retain competent faculty in those positions. In assessing whether the school has met that burden, the following should be considered: evidence of turnover in full time faculty members, history of successful hiring of full time faculty members, evidence of a system that permits full time faculty members in those positions to be appointed with long-term, presumptively renewable contracts, evidence of full-time faculty members ability to participate in governance of the law school, and evidence of other perquisites similar to tenured faculty, such as participation in faculty development and support programs.

Interpretation 405-2
A system of tenure earning rights, while not required, can be an effective method of protecting faculty members' academic freedom. For full-time faculty positions in the law school that do not carry traditional tenure, the law school bears the burden of establishing that it provides sufficient protection for academic freedom. A school may meet its burden by presenting evidence of its, or its university's, explicit acceptance of the protections articulated in the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments and an established procedure involving a representative group of faculty to review the performance of those faculty for appointment, renewal of contracts of appointment, and termination that effectively

protects academic freedom involving the faculty, or a subset thereof.

Interpretation 405-3
The law school's written policy with respect to the protection of the academic freedom of its full time faculty members should provide procedures to ensure that its policy is followed, including rules that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of law or university faculty agree that the determination is not a violation of academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty making that determination.

Interpretation 405-4
Meaningful participation in law school governance includes faculty participation in decisions affecting the mission and direction of the law school, including academic matters such as curriculum, academic standards, and methods of instruction. The law school shall have a written policy on full-time faculty participation in appointment, renewal, promotion and grant of tenure or presumptively renewable contract status of members of the faculty.

Standard 206. DEAN

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with the rights and protections accorded to other members of the full time faculty under Standard 405.

Standard 603. DIRECTOR OF THE LAW LIBRARY

(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with the rights and protections accorded to other members of the full time faculty under Standard 405.

Standard 405. PROFESSIONAL ENVIRONMENT

Alternative Drafts for Discussion Post July 2011

Alternative 2

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions that are adequate to attract and retain a competent full-time faculty sufficient to accomplish its mission.

(b) A law school shall have a written policy and procedures that provide protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs, and in pursuing their research activities, governance responsibilities, and law school related public service activities.

(c) A law school shall afford all full-time faculty members a form of security of position sufficient to ensure academic freedom and meaningful participation in law school governance, and shall have a written comprehensive system for evaluating candidates for all positions for renewal, promotion and termination. Security of position sufficient to satisfy this Standard must, at a minimum, provide a program of presumptively renewable long-term contracts that are at least five years in duration after a probationary period not to exceed seven years. During probationary periods full-time faculty may be employed on short-term contracts.

(d) A law school shall have a policy that provides for the meaningful participation of all full time faculty members in the governance of the school.

Interpretation 405-1
The law school's written policy with respect to the protection of the academic freedom of its full time faculty members should provide procedures to ensure that its policy is followed, including rules that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of law or university faculty agree that the determination is not a violation of academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty, or a subset thereof. A law school may support its compliance with requirement of a written policy for the protection of academic freedom by presenting evidence of its, or its university's, explicit acceptance of the protections of the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments.

Interpretation 405-2
A program of presumptively renewable contracts means a program that provides protection against non-renewal of a contract similar to the protections typically provided to a tenured faculty member against removal of tenure. Either tenure or presumptively renewable contracts that are limited to a specified program while that program continues to exist are permissible forms of security of position.

Interpretation 405-3
This Standard does not preclude the use of short-term contracts for a limited number of fixed term appointments, so long as they are not restricted to a single class of faculty, nor does it preclude a law school from offering fellowship or visiting assistant professor programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experiences of limited duration.

Interpretation 405-4
Meaningful participation in law school governance includes participation with voting rights by all full-time faculty members in faculty meetings, committees, and other aspects of law school governance involving matters such as mission and direction of the law school, including academic matters such as curriculum, academic standards, and methods of instruction. This Interpretation does not preclude a law school from restricting or withholding the rights of faculty members to participate in decisions on faculty appointments, retention, promotion, grant of tenure, or grant of presumptively renewable contract status, outside their field of study or teaching. Neither Standard 405(d) nor this Interpretation applies to those individuals referred to in Interpretation 405-3.

Standard 206. DEAN

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with the rights and protections accorded to other members of the full time faculty under Standard 405.

Standard 603. DIRECTOR OF THE LAW LIBRARY

(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with the rights and protections accorded to other members of the full time faculty under Standard 405.

Standard 405 Alternative Drafts for Discussion Post July 2011 Side by Side comparison	
Alternative #1	Alternative #2
(a) A law school shall establish and maintain conditions that are adequate to attract and retain a competent full-time faculty sufficient to accomplish its mission. ***Interpretation 405-1*** *A system of tenure earning rights, while not required, can be an effective method of attracting and retaining a competent full time faculty. For full-time faculty positions that do not include the possibility of a tenured appointment, the law school bears the burden of showing that it has established sufficient conditions to attract and retain competent faculty in those positions. In assessing whether the school has met that burden, the following should be considered: evidence of turnover in full time faculty members, history of successful hiring of full time faculty members, evidence of a system that permits full time faculty members in those positions to be appointed with long-term, presumptively renewable contracts, evidence of full-time faculty members ability to participate in governance of the law school, and evidence of other perquisites similar to tenured faculty, such as participation in faculty development and support programs.*	**(a) A law school shall establish and maintain conditions that are adequate to attract and retain a competent full-time faculty sufficient to accomplish its mission.**
(b) A law school shall have a written policy and procedures that provide protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs, and in pursuing their research activities, governance responsibilities, and law school related public service activities. ***Interpretation 405-2*** *A system of tenure earning rights, while not*	**(b) A law school shall have a written policy and procedures that provide protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs, and in pursuing their research activities, governance responsibilities, and law school related public service activities.** ***Interpretation 405-1***

required, can be an effective method of protecting faculty members' academic freedom. For full-time faculty positions in the law school that do not carry traditional tenure, the law school bears the burden of establishing that it provides sufficient protection for academic freedom. A school may meet its burden by presenting evidence of its, or its university's, explicit acceptance of the protections articulated in the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments and an established procedure involving a representative group of faculty to review the performance of those faculty for appointment, renewal of contracts of appointment, and termination that effectively protects academic freedom involving the faculty, or a subset thereof. ***Interpretation 405-3*** *The law school's written policy with respect to the protection of the academic freedom of its full time faculty members should provide procedures to ensure that its policy is followed, including rules that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of law or university faculty agree that the determination is not a violation of academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty making that determination.*	*The law school's written policy with respect to the protection of the academic freedom of its full time faculty members should provide procedures to ensure that its policy is followed, including rules that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of law or university faculty agree that the determination is not a violation of academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty, or a subset thereof. A law school may support its compliance with requirement of a written policy for the protection of academic freedom by presenting evidence of its, or its university's, explicit acceptance of the protections of the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments.*
(c) A law school shall have an announced and written comprehensive system for evaluating candidates for promotion, termination, tenure and renewal of contracts or other forms of security of position.	**(c) A law school shall afford all full-time faculty members a form of security of position sufficient to ensure academic freedom and meaningful participation in law school governance, and shall have a written comprehensive system for evaluating candidates for all positions for renewal, promotion and termination. Security of position sufficient to satisfy this Standard must, at a minimum, provide a program of presumptively renewable long-term contracts that are at least five years in duration after a probationary period not to exceed seven years. During probationary periods full-time faculty may be employed**

	on short-term contracts. ***Interpretation 405-2*** *A program of presumptively renewable contracts means a program that provides protection against non-renewal of a contract similar to the protections typically provided to a tenured faculty member against removal of tenure. Either tenure or presumptively renewable contracts that are limited to a specified program while that program continues to exist are permissible forms of security of position.* ***Interpretation 405-3*** *This Standard does not preclude the use of short-term contracts for a limited number of fixed term appointments, so long as they are not restricted to a single class of faculty, nor does it preclude a law school from offering fellowship or visiting assistant professor programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experiences of limited duration.*
(d) A law school shall have a policy that provides for meaningful participation of all full time faculty members in the governance of the school. ***Interpretation 405-4*** *Meaningful participation in law school governance includes faculty participation in decisions affecting the mission and direction of the law school, including academic matters such as curriculum, academic standards, and methods of instruction. The law school shall have a written policy on full-time faculty participation in appointment, renewal, promotion and grant of tenure or presumptively renewable contract status of members of the faculty.*	**(d) A law school shall have a policy that provides for the meaningful participation of all full time faculty members in the governance of the school.** ***Interpretation 405-4*** *Meaningful participation in law school governance includes participation with voting rights by all full-time faculty members in faculty meetings, committees, and other aspects of law school governance involving matters such as mission and direction of the law school, including academic matters such as curriculum, academic standards, and methods of instruction. This Interpretation does not preclude a law school from restricting or withholding the rights of faculty members to participate in decisions on faculty*

	appointments, retention, promotion grant of tenure or grant of presumptively renewable contract status outside their field of study or teaching. Neither Standard 405(d) nor this Interpretation applies to those individuals referred to in Interpretation 405-3.
Standard 206. DEAN (c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with the rights and protections accorded to other members of the full time faculty under Standard 405.	**Standard 206. DEAN** (c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with the rights and protections accorded to other members of the full time faculty under Standard 405.
Standard 603. DIRECTOR OF THE LAW LIBRARY (d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with the rights and protections accorded to other members of the full time faculty under Standard 405.	**Standard 603. DIRECTOR OF THE LAW LIBRARY** (d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with the rights and protections accorded to other members of the full time faculty under Standard 405.