

To: Law School Faculty  
From: Educational Policy Committee  
Date: April 27, 2022  
Re: DEI Reforms to the Curriculum

Social justice is enshrined in the King Hall name and the Law School's mission. The question of how best to advance the School's stated goal of educating "socially responsible lawyers committed to ... significant public service" is one that must be continually re-asked and answered as social change occurs. In the midst of such change, for the last two years, our students, staff, and faculty have been asking that question particularly in regard to our social responsibilities surrounding racial justice. The Law School's Diversity, Equity, and Inclusion Committee has been addressing the School's overall climate and commitments, while the Educational Policy Committee has, with the DEI Committee's input, spent much of the year discussing how the School of Law can continue building on its many current curricular and co-curricular offerings that grapple with racism and other inequalities in the world, in the law, and in our own classrooms.

While these efforts were underway, the American Bar Association House of Delegates voted to amend ABA Standard 303 to require that law schools "**provide education to law students on bias, cross-cultural competency, and racism.**" The standard requires that this education occur "**at the start of the program of legal education,**" and "**at least once again before graduation.**" The latter "educational occasion" has to happen before or while students take "clinical or field placement courses." The required "education" does not necessarily mean a formal course; it could include orientation sessions, guest lectures or other educational experiences, as long as "**all law students are required to participate.**" (The revised standard and interpretations are included below as Attachment A.)

The new ABA standard (303(c)) provides certain constraints insofar as it requires that education on these topics occur both at the start of the curriculum and again later on. But given the vagueness of its substantive requirements—an Interpretive Note claims that "Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism"—the new standard does little else to dictate what particular curricular changes need to be made in light of the Law School's existing offerings.

It may be worth stressing at the outset how extensive our current educational offerings are on the issues the ABA has identified. These include:

- a mandatory session on implicit bias for 1Ls during Intro Week;
- the optional Community Read during Intro Week;
- the "Critical Perspectives in the Classroom" run by the Aoki Center, a yearly series of six lectures organized around the 1L curriculum;
- the Law School's Racial Justice Speaker Series;
- Aoki Center's various other lecture series;
- classes such as Reforming the Police and Criminal Justice; Race, Mass Incarceration and Policing; Implicit Bias and the Law; Tax and Distributive Justice; Critical Race

Theory; Race and the Law; Disability Rights Law; Mental Disability Law; Race, Gender, and Inequality; Gender, Sexuality, and the Law; Military Justice and Social Change; Race, Gender, and SOGI; Comparative Forced Migration; Business and Human Rights; the UN Human Rights Practicum; the First Gen Experience in Scholarly and Popular Literature; Community Lawyering; Law and Rural Livelihoods; Access to Justice; Feminist Legal Theory; Reproductive Rights, Law, and Policy; Women's Human Rights; Employment Discrimination; Education Policy and the Law; Special Education Law and Policy; Child Welfare and the Law; Juvenile Justice; Death Penalty Seminar; Federal Indian Law; Tribal Justice; Farmworkers and the Law; Poverty Law; Humanizing Deportation; as well as our many clinical and practicum offerings.

In short, given the scholarly interests of our faculty, the diversity of our community, and the depth of our curricular and co-curricular offerings, there are ample opportunities to explore structural racism and other forms of bias and subordination here at King Hall. Exposure to these issues is not currently *guaranteed*, however, aside from the implicit bias training offered (and required) during Intro Week. To ensure that *all* of our students will be meaningfully exposed to these topics, and to comply with ABA Standard 303(c), the Educational Policy Committee thus recommends the following:

1. That we retain and potentially expand or improve anti-bias and sensitivity training during Intro Week;
2. That we take steps to further diversify and add critical perspectives to the 1L curriculum;
3. That we add a **new graduation requirement** according to which students will take at least one upper-level course that is centrally concerned with bias, cross-cultural competency, and racism (chosen from a menu of options spanning subject areas within the law);
4. That the Externship Seminar and our clinical programs offer a session on bias, cross-cultural competency, and racism; and
5. That we continue to find and offer expanded opportunities for faculty trainings and other resources about building inclusive classrooms, managing difficult conversations, and teaching sensitive topics and that we, as a faculty, commit to attending at least one such training in the coming academic year.

More detailed information on each of these recommendations follows.

### 1. Retain and Potentially Expand Anti-Bias Training During Intro Week

Orientation Week for incoming 1Ls currently includes a mandatory session on implicit bias and a voluntary community book read, which has (so far) featured books and discussions on racial justice issues. The mandatory implicit bias training likely satisfies ABA Standard 303(c)(1). Ideally, in combination, these sessions will effectively introduce our students to problems of bias and will model how a diverse community like ours can have productive conversations on sensitive topics. The Education Policy Committee recommends that the DEI Committee evaluate whether our current programming during Orientation Week achieves those goals or whether other or additional content would be more effective.

## 2. Critical and Antiracist Perspectives in the 1L Curriculum

While the Aoki Center currently runs a lecture series on “Critical Perspectives in the Classroom” for first-year students, the faculty has expressed its support for finding ways to better incorporate critical and antiracist perspectives into the day-to-day classes 1Ls are required to take. To promote that goal, the Educational Policy Committee has worked with the Intellectual Enrichment Committee to expand this year’s Schmooze in order to provide a forum for professors to meet with their subject matter cohort (all eight of the 1L classes and subject-related groupings for non-1L faculty) in order to share ideas about how to better diversify their syllabi and incorporate critical race/gender and similar insights into their classes. In advance of the workshop, professors have been asked to exchange their syllabi with colleagues within their subject-matter groupings. They have also been invited to bring to the discussion any relevant cases, articles, and other resources that they have found helpful in their courses.

## 3. New Upper-level Course Requirement on Bias, Cross-cultural Competency, and Racism

To satisfy ABA Standard 303(c)(2) and to ensure that all King Hall students have an opportunity to examine issues of bias, cross-cultural competency, and racism before they graduate, the Educational Policy Committee recommends that the faculty approve a new graduation requirement, to go into effect beginning with the class entering in Fall 2023. Under the requirement, students would need to take one upper-level class from a menu, approved each year by the Education Policy Committee, of classes that provide substantial exposure to these issues in some area(s) of law. (These may or may not include the courses listed on pages 1-2, and others will be added.) Ideally, the menu of options will be expansive enough that students will be able to choose classes that examine issues of racial or other forms of bias in their preferred area of study. The hope, in other words, is that we take critical, antiracist, and similar perspectives to students where they are—to the subject areas they care about—rather than forcing students to take some common curriculum. We also value and see the importance of Critical Race Theory as a stand-alone class, and we aspire to make it an annual course offering whenever possible.

## 4. Anti-Bias, Cross-cultural Competency, and Racism Training in the Externship Seminar

Because ABA Standard 303(c)(2) has to be satisfied before or during students’ participation in clinical or field placement courses, students may not be able to take a course from the menu described above before or during their enrollment in a clinic or externship. For that reason, the Committee recommends that, by Fall 2023, the Externship Seminar and the clinical programs offer a session devoted to bias, cross-cultural competency, and/or antiracism. Our understanding is that this is already happening in most, if not all, of these programs. In the externship seminar, which now involves mostly asynchronous modules, students who have not yet fulfilled the course requirement described above (or who are not concurrently enrolled in a qualifying class) should be required to choose a module on this topic. These trainings are in addition to, not a substitute for, the graduation requirement described above.

## 5. Pedagogical Commitments

The School of Law's commitment to ensuring that all of our students will engage with issues of racism and other forms of subordination in the law is going to require faculty in a wide range of classes to lead difficult conversations on topics that affect students in disparate ways. Our diverse student body—and our diverse faculty—come to these conversations with widely divergent experiences, opinions, and background knowledge. Finding the right methods and language to use in leading these discussions will not always be easy. To that end, the Educational Policy Committee recommends that the Dean's Office amend the model syllabus to provide language that addresses these challenges head-on and suggests resources students can turn to when they have concerns. We recommend that those resources include: talking to the professor directly, consulting with the School's DEI Fellow, and/or speaking with Tutors in 1L classes, who will ideally receive training on this. The Committee also recommends that the Dean's Office make available to faculty further resources and trainings that are specific to law teaching. We invite formal discussion among the faculty about its willingness to commit to attending such a training in the coming year.

The Committee is under no illusion that this will be the last memo on this topic. We expect—in fact, hope—that it will not be. The proposals here should be revisited whenever social needs change and better ideas come along. So, without foreclosing the possibility of change in the meantime, we recommend that the Educational Policy Committee evaluate the success of any enacted proposals no later than four years from now.

The Educational Policy Committee unanimously endorses each of the recommendations in this memo and makes the following specific motions:

1. That the faculty approve the new upper-level course requirement on bias, cross-cultural competency, and racism described above;
2. That the faculty resolve that, in the coming academic year, we will aim to attend a training session, arranged by the Dean's Office, on best pedagogical practices surrounding sensitive/controversial discussions and inclusive classrooms; and
3. That the faculty approve the remaining recommendations in this memo.

## ATTACHMENT A

### ABA Standard 303: Curriculum (**Redline is new as of 2-14-2022**)

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

- (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304.

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s); and
- (2) student participation in pro bono legal services, including law-related public service activities.; and
- (3) the development of a professional identity.

(c) A law school shall provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education, and
- (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrent with, or as part of their enrollment in clinical or field placement courses.

### Interpretation 303-1

A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upperclass writing requirement [see 303(a)(2)] or as a simulation course [see 304(a) and 304(b)] provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.

### Interpretation 303-2

Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience.

### Interpretation 303-3

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition,

lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2). Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

#### **Interpretation 303-4**

Law-related public service activities include (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; (ii) helping charitable, religious, civic, community, governmental, and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

#### **Interpretation 303-5**

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.

#### **Interpretation 303-6**

With respect to 303(a)(1), the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.

#### **Interpretation 303-7**

Standard 303(c) may be satisfied by:

- (1) Orientation sessions for incoming students on bias, cross-cultural competency, and racism;
- (2) Guest lectures by experts in the areas of bias, cross-cultural competency, and racism;
- (3) Courses on racism and bias in the law; or
- (4) Other educational experiences that educate students in cross-cultural competency.

While law schools need not add a required upper-division course to satisfy this requirement, law schools must demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the legal profession.

#### **Interpretation 303-8**

Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism required by Standard 303(c).