ABA Panel Considering Boosting Job Protections for Nontraditional Faculty
By Karen Sloan
July 14, 2011

An ABA committee is leaning toward extending job protections for law school clinicians, writing instructors and other nontraditional faculty in a way that would stop short of traditional tenure.

The Standards Review Committee on Sunday voiced initial support for a proposal to require that schools at least provide full-time faculty members with a "program of presumptively renewable long-term contracts that are at least five years in duration after a probationary period reasonably similar to that for tenure-track faculty members."

The contracts would not provide the same job security as tenure, but would offer more protection than exists at present for many nontenured faculty, who often work under short-term contracts.

The idea is to eliminate inequality between different types of law professors, said Vice Chairwoman Margaret Barry, a professor at Catholic University of America Columbus School of Law. The committee has yet to decide whether faculty members on long-term contracts should have the same voting rights regarding faculty promotions that tenured faculty enjoy.

The matter came up during a two-day meeting in Minneapolis of the committee, which among other reforms has been debating whether the ABA should require law schools to grant faculty tenure. Many academics have long read the existing standards as protecting tenure rights, but the review committee has questioned that interpretation and has taken the position that the ABA should not regulate the terms and conditions of employment.

The proposal was drafted by committee member Allen Easley, dean of the University of La Verne College of Law. It would result in two tiers of law professors: those who hold tenure or are on the tenure track, and those holding long-term contracts. Proponents argued that the two-tier system at least would eliminate some of the disparities that now exist. At many law schools, clinicians and legal writing instructors lack job security and faculty voting rights.

"There definitely has been progress towards protecting security of position and acknowledging that it's not enough to simply say, 'We protect academic freedom,' " said Carol Chomsky, a member of the Society of American Law Teachers, which opposes removing references to tenure from the accreditation standards. "I think having a floor of a five-year renewable contract is an important thing. There's still a question about what that means, however. Is it like tenure?"

The proposed standard would allow law schools to hire full-time faculty on short-term contracts during a probationary period. It also would allow a "limited number of fixed-term appointments" under short-term contracts, "so long as they are not restricted to a single class of faculty." That language was added after committee members worried that some schools would lay off faculty members who now work under short-term contracts instead of committing to hiring them on five-year contacts. The standards would not preclude law schools from offering fellowships or
visiting professor positions. "You could have a number of limited fixed-term appointments, but they can't all be legal writing faculty," Easley said.

Not everyone agrees that the committee's new direction is the right one. Loyola University Chicago School of Law Dean David Yellen said that the committee has done well to eliminate ambiguities in the existing standards pertaining to tenure. But he maintained that the ABA should not dictate how law schools employ faculty members.

Committee chairman Donald Polden, dean of Santa Clara University School of Law, warned that adding job protections for faculty members might not sit well with the public, given the job climate.

"Students can't get jobs, but the Standards Review Committee has a proposal that guarantees jobs for all law professors," he said. "It looks bad and the [ABA's Council on Legal Education and Admissions to the Bar] might not like that. We have to be aware of the political context."

The committee has yet to reach a final recommendation, but a majority of its members appeared to support the proposal. There was little support for simply leaving the existing standards as they are or making only minor tweaks. "We signed on to make the standards better," Easley said. "If we think something is really broken, it's our responsibility to try to make it better."