
SCHOOL OF LAW
CLINICAL EDUCATION PROGRAM
Civil Litigation Project
Civil Rights Project

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October 19, 2004

Carl C. Monk
Executive Vice President and Executive Director
The Association of American Law Schools
1201 Connecticut Avenue N. W.
Suite 800
Washington, D.C. 20036-2605

Dear Carl:

I am writing this letter to formally request that the Association of American Law Schools provide amicus assistance on a case is currently pending with the United States Court of Appeals for the Eighth Circuit. As is explained below, this appeal is likely to have a significant impact on fundamental aspects of legal education.

As you may recall, University of North Dakota law professor Laura Rovner¹ was sued in both her individual and official capacities by Martin Wishnatsky last January. The "official capacity" designation means that Mr. Wishnatsky has in fact sued the law school and the university. The claims asserted in his federal complaint allegedly arose when the UND School of Law's Clinical Program declined his request for legal representation. The clinic was not accepting any new cases at that time, due to a lack of resources. Also, in Professor Rovner's professional judgment, this case would not have added significant value to the students' educational experience. In addition, Professor Rovner informed Mr. Wishnatsky that, even if the clinic were accepting new clients, the clinic still would not be able to represent him due to concerns about faculty ethical obligations. Professor Rovner believed that Mr. Wishnatsky's persistent and antagonistic actions against the clinical program and faculty involved with that program would preclude the possibility of establishing an effective attorney-client relationship, ultimately impairing the clinic's ability to adequately represent him.

In May, our attorneys filed a motion for judgment on the pleadings, or in the alternative for summary judgment. The AALS provided valuable assistance by filing an amicus brief in support of our motion. The Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT) submitted a joint amicus brief.

¹ Professor Rovner is now teaching at the University of Denver College of Law.

In July, the District Court for the District of North Dakota granted defendants' motion for judgment on the pleadings. Mr. Wisnatsky filed a motion to alter or amend the judgment, and ultimately, when that request was denied, he appealed to the Eighth Circuit. Now, for the first time, he is represented by counsel: Walter Weber of the American Center for Law and Justice (ACLJ) in Washington, D.C.

The issues in this case warrant AALS involvement as an amicus. Unless the Eighth Circuit affirms the lower court's grant of judgment on the pleadings, this case will proceed to the discovery phase. The heart of this case deals with a professor's academic freedom to decide how best to teach students and which materials to use. The case also threatens to intrude upon the area of a law teacher's professional judgment, as a lawyer, in deciding when effective attorney-client relationships can and cannot be established. A reversal by the appellate court would set a precedent for forcing a professor, and the law school that employs her, to defend these decisions in court. Requiring a faculty member and her institution to submit to discovery about matters relating to her professional judgment in teaching and lawyering is not a principle of law that should be set.

It is important for the court to hear from the AALS, as one of two accrediting bodies for the nation's law schools, in support of meaningful commitment to academic freedom. Respect for a faculty member's judgment in matters of professional ethics and legal education is critical to academic freedom and should not be second-guessed. This is especially important because the Assistant Attorney General, who is defending the lawsuit on behalf of Professor Rovner, the School of Law, and the University of North Dakota, will not be arguing academic freedom issues in his appellate brief. He is requesting assistance in that area from amici.

We hope that once again the AALS will decide to submit an amicus brief in support of the principles important to its members. We also have again requested amicus assistance from CLEA and SALT.

The briefing schedule requires the appellant to file his opening brief by November 24. Our response brief (and presumably any amicus briefs) are due to be filed by December 27. In addition, it is our understanding that the Eighth Circuit prefers that amici request permission to file amicus briefs prior to actually filing them. Although this schedule requires a quick response, the brief submitted by the AALS at the district court level will provide an excellent foundation for the new brief.

We appreciate your consideration of this important request. If I can answer any questions about this matter, please do not hesitate to call me, at (701) 777-2104.

Sincerely,

Paul A. LeBel
Dean