

AGENDA ITEM

JULY 125

Registration of
Unaccredited and
Correspondence Law
Schools – Proposed Rules

DATE: July 2, 2007

TO: Members of the Board of Governors
Members of the Board Committee on Regulation, Admissions and
Discipline Oversight

FROM: Committee of Bar Examiners
Gayle Murphy, Senior Executive, Admissions

**SUBJECT: Registration of Unaccredited and Correspondence Law Schools -
Proposed Rules and Request for Adoption Following Public
Comment**

EXECUTIVE SUMMARY

Under current law and in accordance with the provisions of Rules XIX and XX of the *Rules Regulating Admission to Practice Law in California*, unaccredited and correspondence law schools must register with the Committee of Bar Examiners (Committee) if their students wish to receive credit for their law study toward eventually qualifying to take the California Bar Examination. The requirements for registration, however, are minimal, and primarily require the schools receive degree-granting approval from the Bureau for Private Postsecondary and Vocational Education (Bureau). Legislation was passed in 2006 that consolidates the oversight and regulation of unaccredited and correspondence law schools with the Committee effective January 1, 2008. The Bureau will no longer be involved in the process, and the Committee becomes responsible for the approval, regulation and oversight for these categories of schools, which is in addition to its current responsibilities associated with the accreditation of law schools. The legislation requires the Committee to adopt rules for the regulation of unaccredited law schools, which includes correspondence and distance learning law schools. Using the current rules regulating the accreditation of law schools as a guide for the format, rules for the regulation and oversight of unaccredited, correspondence and distance learning law schools were drafted. The Committee approved the draft rules in principle during its February 2007 meeting. Since then, the proposed registration rules were rewritten to conform to the State Bar of California's new rules language standards. The revised version was approved and it replaced what previously was circulating for public comment. A public hearing was held on June 15, 2007 to receive comments and the last day to file comments was June 18, 2007. In response to the comments received, a third draft of the proposed rules was prepared and renamed as the "Unaccredited Law School Rules."

In conformance with the State Bar's public comment procedures, the proposed amendments were circulated for a 90-day public comment period. Several comments were received, and several non-substantive changes were made to the proposed rules. After review of the comment and consideration during its June 30, 2007 meeting, the Committee adopted the proposed new rules, subject to the approval to the Board of Governors.

SUBJECT/ISSUE

Whether the proposed *Unaccredited Law School Rules* regarding the registration of fixed-facility, correspondence and distance learning law schools as proposed by the Committee of Bar Examiners should be approved.

BACKGROUND/SUMMARY OF PROPOSAL

The provisions of Senate Bill 1568 (Dunn), a copy of which is attached as Attachment A, become effective January 1, 2008. In order to appropriately administer the new law, rules for the regulation and oversight of unaccredited law schools, which includes correspondence and distance learning law schools, must be adopted and timely circulated to the affected schools so they have a sufficient amount of time to come into compliance.

The first draft of the proposed rules to implement the legislation was considered by the Committee of Bar Examiners (Committee) during its February 2 and 3, 2007 meeting. Subsequently, the rules were revised to conform to the State Bar of California's "plain English" standards that were recently adopted. With the approval of the Board Committee on Regulation, Admissions and Discipline Oversight, both versions were circulated for public comment; the first draft replaced by the second in mid-May. In addition to soliciting written public comment, a hearing was held on June 15, 2007 to receive comment.

The newly titled *Unaccredited Law School Rules*, which are attached as Attachment B, will be supplemented with Guidelines, which is similar to how the rules governing the accreditation of law schools are administered. In this third version, changes have been indicated through underlining (additions) and strike-outs (deletions), and footnotes are included to indicate why the changes were made. None of the changes are considered substantive to the point where another period of public comment is warranted. The proposed fees to implement the new program will be placed on the Committee's August or October meeting agenda for consideration. The fees are subject to approval by the Board of Governors, which will need to take place by its November 2007 meeting in order to have them in place at the same time the new rules are implemented.

In addition to considering the content contained in the *Rules Regulating Accreditation of Law Schools in California*, the legislation, the current Rules XIX and XX of the *Rules Regulating Admission to Practice Law in California*, Rule 9.30 of the *California Rules of Court*, and the requirements for approval by the Bureau were used as resources in the drafting of the proposed *Unaccredited Law School Rules*.

After receiving approval to do so by the Board Committee on Regulation, Admissions and Discipline to do so, the proposed new law school registration rules for unaccredited, correspondence and distance-learning law schools were circulated for a 90-day public comment period. Many written comments were received and a public hearing was also held to receive comments.

REPORT OF PUBLIC COMMENT RECEIVED

Report of Public Comments Received

Nineteen comments were received. A summary of the comments and the comments are attached as Attachment C.

Many of the comments suggested similar changes, others conflicting changes. An attempt has been made below to summarize the comments and to respond, although each and every comment is not addressed.

Several schools were confused about the Committee's role, stating that the new rules go beyond registration. Under the recent statutory changes, the Committee's responsibility does go beyond merely registering schools and now includes "regulation and oversight" (BPC Sec. 6047.7). The areas of review, i.e., admissions, faculty, program, physical facilities, etc. are the standard areas reviewed by any oversight agency, whether the ABA, the Bureau, WASC, or the Committee.

There were schools concerned that the rules for accredited and unaccredited law schools will be too similar, that potential students would find it difficult to determine what the differences are. While it is true that many of the same requirements will apply to both categories of schools, those things that are the same should be considered basic principles for any law school. The accreditation standards, which are interpreted by Factors and Comments, set a higher level of expectation, much like the ABA standards do compared to the California-accredited standards, for program quality than is necessary to provide just an adequate program. At some point it is up to potential law students to do the research, inquire into what standards there are, how they differ, as they do when they compare cost, examination passage rates, location, etc.

Unaccredited Law Schools

Unaccredited law schools include fixed facility, correspondence and distance learning law schools, and the proposed rules were modified to make this clear. Several schools made similar comments regarding the awarding of the JD degrees, library requirements, continuation of registration, extension of time for responses, and costs. The major issue involves the "non-bar" JD degrees.

With the Bureau's permission, unaccredited law schools have been issuing these degrees for many years. Awarding the degrees essentially allows the schools to continue students who do not pass the First-Year Law Students' Examination (FYLSE), and, in some cases, require only three years of law study rather than four. Under the new Unaccredited Law School Rules, only those students who are eligible to take the bar examination may receive a J.D.

What the "non-bar" degree should be called is a primary issue. LL.B is not appropriate because that is the equivalent of a J.D. The EJD and the MLS sound similar in content and requirements. One distance learning law school uses "Executive Juris Doctorate," which to some may sound like a degree that would be awarded post J.D. Currently, there are only standards (for the accredited law schools) that dictate what should be included in a J.D. program. Requirements for the other programs have not yet been drafted, although that is a future goal of the Committee. The accreditation and registration rules focus on the J.D. degree. What the non-bar degree will be called can be taken care of through the Guidelines.

Students currently in non-bar programs will still be able to receive J.D. degrees, but any law student admitted after January 1, 2008, who does not satisfy the requirements for taking the California Bar Examination, will be graduating with a degree that has a different name.

Many schools expressed concern about the library requirements. This concern is premature, as the library requirements will be contained in the draft Guidelines, which they will be invited to comment on, before the Committee adopts them. Most likely, the Guidelines will permit electronic access to many of the requirements, which is not allowed under the current rules. And, while the distance learning and correspondence law schools may not have to have a library onsite, it is anticipated that there will be guidelines drafted that specify what kind of electronic access should be made available to students and what kind of library training should be part of the educational program.

Several schools were concerned about costs. Again this concern is premature as the fees for the new program have not yet been determined. It is quite clear in the legislation that the fees must be reasonable and it is anticipated the cost of the new program will be subsidized by other funds, at least in the beginning.

Several schools wanted additional time within which to respond to actions taken by the Committee. Schools do not need the same time as allowed the Committee because schools are in constant operation, while the Committee meets only 7-8 times a year. Changing the timelines at this point in the process would constitute a substantive change, which would require the proposed rules be circulated for another period of public comment. Given the timeframe as to when the legislation requires the new rules to become effective, there is not enough time to circulate another proposal for something of this nature, when Committee waiver would permit later filing if needed.

One school wanted advance notice of a pending site inspection. This has always occurred with the accredited schools and will probably be the same for unaccredited schools. In some rare cases, an unscheduled visitation might be in order to ensure a school is in compliance with the rules.

Several schools wanted to be informed of student complaints so the school could respond. Under the procedures in place relative to the *Rules Regulating the Accreditation of Law Schools in California* (Accreditation Rules), complaints are only shared with the law schools with the writer's permission. Otherwise, a complaint might trigger a letter to the school asking it to comment about some alleged wrongdoing. This is only done when it involves issues related to the school's compliance with the rules. The procedure in place has worked well, and shouldn't be modified.

Several schools wanted to ensure that schools registered as of January 1, 2008 under the current rules, will continue to be registered under the new rules. The first draft of the proposed rules contained the following provision: "A law school registered by the Committee on January 1, 2008 or the effective date of these Rules will continue to be a registered law school, unless the Committee thereafter withdraws its registration pursuant to Rule Seven," but it was not included in the second version. It is believed that this should be part of the motion and implementing language rather than become a permanent part of the rules.

Schools wanted to ameliorate some of the language regarding retention and exploitation of students. Schools may be concerned because many of them admit previously disqualified students. Several had difficulty with the adjective "sound" which means reasonable and responsible. These issues may be premature, as the Guidelines will further define what is meant by these terms, which are also used in the Accreditation Rules.

California Accredited Law Schools (CALS)

CALS' main concern is the potential for a blurring of the distinction between the accredited and unaccredited law schools. Most of their comments were directed toward notice and disclosure. The CALS suggested that throughout the Rules all registered

schools be identified as unaccredited to avoid any confusion. In the third draft of the proposed rules, the distinction has been better drawn. It is clear, as it is also stated in the legislation, that whether a school is a correspondence, distance learning or fixed-facility law school, if subject to these rules, they are all unaccredited.

CALS believe the definition of the FYLSX should be included. While it was in the first draft of the proposed rules, it was taken out of the second because it was more relevant to students than to law schools, and was not mentioned again after the definition. It is clearly a requirement, however, that anyone attending an unaccredited law school should be aware of and the Guidelines will have reference to it. A definition has been reinserted.

The CALS also believe that to the Disclosure section, Rule 4.241 should be modified to include:

1. A statement that the school is not approved by the ABA or accredited by the Committee and a mandate that schools cannot infer that recognition by other agencies is the equivalent of Committee accreditation.
 - This issue would likely be covered by Guidelines interpreting the Integrity Standard.
2. A statement regarding the limitation on practice in other jurisdictions.
 - This statement will be required under the Guidelines, similar to what is in the Factor interpreting the Accreditation Rules, in all bulletins, publications and web sites.
3. A statement that students must take and pass the FYLSX to be eligible to take the California Bar Examination.
 - It is believed that changing the disclosure statement requirements at this time in the process would constitute a substantive change, which would require another period of public comment prior to adoption. The First-Year Law Students' Examination requirement should be part of any advertisements, bulletins, publications and information that a school provides, which most of the schools already do, and language to this effect will be included in the proposed Guidelines.

CALS would like to have the Disclosure Statement given to the prospective student before the student applies for admission. Under Business and Professions Code Section 6061, the Disclosure Statement is to be given to the student "subsequent to the payment of any application fee, but prior to the payment of any registration fee." This request asks for stricter requirements than included in the statute.

By resolution passed in January 2007, CALS requested that unaccredited schools be required to include in all recruitment materials and publications, the statement that "_____ is unaccredited by, but registered with, the Committee of Bar Examiners. Registration with the Committee is neither comparable to nor the equivalent of accreditation."

All the comments were helpful, and as you can see, many of the suggestions have been incorporated into the final draft of the proposed rules. Following approval by the Board of Governors, the new rules will replace and supersede Rules XIX and XX of the *Rules Regulating Admission to Practice Law in California* and become effective January 1, 2008.

EFFECTIVE DATE OF PROPOSAL

The proposed rules, if approved by the Board of Governors, would become effective January 1, 2008.

FISCAL AND PERSONNEL IMPACT

Depending on the final version of the registration rules, which will affect the level of staffing and costs associated with the functions assigned to the Office of Admissions' Educational Standards department, appropriate fees in an amount to sufficiently fund this program will be determined. The proposed fees will be submitted to the Committee and Board of Governors for approval later this year.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

The *Unaccredited Law School Rules* should become an appendix to the Administrative Manual.

PROPOSED BOARD COMMITTEE RESOLUTION

If the Board Committee on Regulation, Admissions, and Discipline Oversight agrees with the Committee of Bar Examiners' recommendation to approve the proposed new unaccredited law school rules, the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Committee of Bar Examiners, that the Board Committee on Regulation, Admissions and Discipline recommends that the Board of Governors of The State Bar of California approve the proposed *Unaccredited Law School Rules* regarding the registration of unaccredited fixed facility, correspondence and distance learning law schools in California in the form attached, to be effective January 1, 2008; and it is

FURTHER RESOLVED, that upon implementation of these new rules, Rules XIX and XX of the *Rules Regulating Admission to Practice Law in California* be repealed; and, it is

FURTHER RESOLED, that any unaccredited fixed-facility, correspondence and distance learning law school registered with the Committee of Bar Examiners as of December 31, 2007, be considered registered under the *Unaccredited Law School Rules* as of January 1, 2007, subject to whatever visitation schedule the Committee of Bar Examiners may determine is appropriate to ensure the schools' compliance with the new rules.

PROPOSED BOARD RESOLUTION

Should the Board of Governors concur with the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, adoption of the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline, that the Board of Governors of The State Bar of California hereby approves the proposed *Unaccredited Law School Rules*, in the form attached to these minutes and made a part hereof, to be effective January 1, 2008; and it is

FURTHER RESOLVED, that upon implementation of these new rules, Rules XIX and XX of the *Rules Regulating Admission to Practice Law in California* be repealed; and, it is

FURTHER RESOLED, that any unaccredited fixed-facility, correspondence and distance learning law school registered with the Committee of Bar Examiners as of December 31, 2007, be considered registered under the *Unaccredited Law School Rules* as of January 1, 2007, subject to whatever visitation schedule the Committee of Bar Examiners may determine is appropriate to ensure the schools' compliance with the new rules.

