



Oak Brook College of Law

Pro Deo et Patria

June 5, 2007

The State Bar of California
Committee of Bar Examiners
180 Howard Street
San Francisco, CA 94105-1639

RE: Proposed Rules on Registration of Unaccredited, Correspondence, and Distance-Learning Law Schools (5/14/07 draft)

Dear Committee of Bar Examiners:

Because our comments to the proposed rules on the registration of distance-learning law schools relate to the mission and purpose of our school, I want to give relevant background information.

Oak Brook College of Law and Government Policy is a nonprofit California religious corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The College was incorporated in October 1994, enrolled its first class in April 1995, and received its tax-exempt status as a school in October 1995.

The purpose of the College, as stated in the Articles of Incorporation under the California Nonprofit Religious Corporation Law, is "to prepare students to serve their respective communities in the practice of law, and to train students in the character qualities which make them true servants of the public and merit the trust of both clients and courts." This purpose is fulfilled by providing a high quality legal education at a reasonable price, all within the context of the School's Statement of Faith and a historical and Biblical worldview.

Oak Brook College students are trained in the traditional courses taught at any other law school, but they are also challenged to consider the Common Law foundations of the American legal system. It is critical that students understand how the presuppositions about the nature of man, the source of law, and the purpose of law have been integrated into the philosophy of government of this nation. As stated in the College's "Perspective and Methods":

Oak Brook College approaches law and government policy from a Biblical and historical perspective. Oak Brook College students are committed to the self-evident truths articulated by our Founding Fathers in the Declaration of Independence and they reject the faith of evolution and the religion of secular humanism. Students learn the Biblical foundations of

the Common Law and are challenged to make conventional application of these principles to resolve today's legal and governmental issues.

Oak Brook College trains its students by using innovative distance-learning techniques, seminars, workshops and on-line instruction. The faculty and students pursue Godly wisdom by memorizing and meditating upon God's word, the Bible, and seek to use this wisdom in resolving conflicts, developing strategies, and implementing policy. As believers in the Lord Jesus Christ as their personal Savior, Oak Brook College students rely upon the indwelling Holy Spirit to give them the power to develop within them Christ-like character qualities such as meekness, humility, truthfulness, boldness, diligence, initiative and responsibility.

Students in the Oak Brook College law and government policy programs desire to glorify God by doing the good works they have been called to do in law and government policy, with integrity, enthusiasm, thoroughness, and honesty. It is the College's goal that graduates of Oak Brook College would be wise public servants and statesmen primarily interested in using their legal and professional training to help those in need by providing wise counsel and direction.

Oak Brook College is committed to this mission. In fact, it is the very reason why most of its students chose to apply to Oak Brook College rather than another distance-learning law school.

The faculty and administration of Oak Brook College believe there are three requirements for a successful educational program: character, competency, and credibility. The character of faculty and students is important because of the position of public trust held by lawyers. The competency of a school's graduates is primary and it is accomplished through the school's curriculum and academic program. The credibility of a school relates to whether the school does what it says it will do. Credibility also involves the aspirations of a school and the methods of reaching those goals. Schools should be free to encourage their students to view the law and legal issues in relation to other economic, religious, social, political, or historical factors. Some of the perspectives that exist at other law schools include "law and economics," "critical legal studies," and "natural law." This gives students a real choice in legal education, and diversity is achieved both within a school and among schools.

Specific Comments on the Proposed Rules

Rules 4.208 and 4.210.

Rule 4.208 Waiver of requirements

(A) A registered law school may request that the committee waive any rule or guideline except one mandated by law. The request must clearly show that the law school otherwise complies with the rules and can provide a sound legal education.

(B) The committee will allow a law school a reasonable time to comply with the rule or guideline for which it has granted a waiver, but a waiver is temporary. A request to renew a waiver must be filed with the Annual Compliance Report. The committee may then renew, modify, or withdraw the waiver.

Rule 4.210 Extensions of time

For good cause, the committee may extend a time limit prescribed by these rules.

Comment: The proposed Rules are silent on the status of existing distance-learning law schools like Oak Brook College, which has been operating for over 10 years under the previous rules. Is it the intent of the Rules to require all existing distance-learning law schools to go through the registration process as a new school?

Suggestion: Give existing distance-learning schools in good standing a three year period of time to make application and complete the registration process. All such existing schools should retain their good standing during the three-year transition period until they obtain approval of their application for registration by the Committee. During the transition period the existing law schools should retain degree granting authority and all other rights of a Registered Law School. If all existing schools are required to apply for registration, it will create an upfront rush. An alternative is to give the existing schools a staggered schedule to apply.

Rule 4.240 (L) Standards

(L) Equal Opportunity and Non-Discrimination. Consistent with sound educational policy and these rules, the law school should demonstrate a commitment to providing equal opportunity to study law and in the hiring, retention and promotion of faculty without regard to sex, race, color, ancestry, religious creed, national origin, disability, medical condition, age, marital status, political affiliation, sexual orientation, disabled veteran or Vietnam Era veteran status.

Comment: The proposed Rules make no provision for a religious school to make decisions about faculty and students on the basis of its statement of faith and code of moral conduct. As written, the rule could be applied to deny a school its First Amendment rights with respect to religious liberty. According to Oak Brook College's statement of faith, the Bible is the inspired Word of God and a believer's rule of faith and practice. Oak Brook College is committed to equal opportunity, but will make distinctions on the basis of whether an individual has "convictions, goals, and objectives consistent with the statement of faith and the mission of the Oak Brook College." The Bible is also the standard of moral conduct for students and faculty, and offenses are responded to according to Biblical principles.

Suggestion: Revise this Rule to include a clause that permits a school to make distinctions among students and faculty on the basis of its statement of faith, mission, and code of moral conduct.

Rule 4.244 (A) Inspections

(A) A registered law school must be inspected every five years or more frequently if the committee determines that an inspection is required to assess compliance with these rules.

Comment: The maximum registration period of 5 years is too short. The expense of a periodic review should not be imposed every 5 years without good cause.

Suggestion: Change the maximum time between inspections to 7 years. The committee can require more frequent inspections for new schools or schools that have a compliance problem.

Rule 4.246 (F) Major changes defined

(F) sponsoring or offering for law study credit any program or class that will meet more than ten miles from the site of the law school, outside the state where the law school is situated, or in multiple locations;

Comment: This seems targeted at brick and mortar schools, and it should not really apply to distance-learning and correspondence schools. Distance-learning and correspondence schools "meet" all over the United States. A chat session may be taking place by 10 students from 10 different states and a professor from an entirely different state. The chat may be on a web server that is also more than 10 miles from the school. Yet, this would technically meet the definition of a "major change" under this provision.

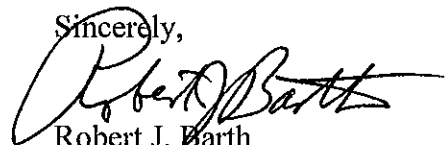
In addition, Oak Brook College is unique in that it has a few in-class courses or seminars that it offers in a location outside of California. All first-year students meet in August for a six-day orientation and Introduction to Law class for 1 hour of academic credit. For the past ten years this course has been offered in Oklahoma City. This is more centrally located in the United States and this class is conducted at a facility owned by another organization with most of the same Board of Directors as Oak Brook College.

Also at this location, 2-3 day Trial Practice and Appellate Advocacy workshops are held in conjunction with the distance learning instruction. Academic credit is given for these courses, which include the group workshops.

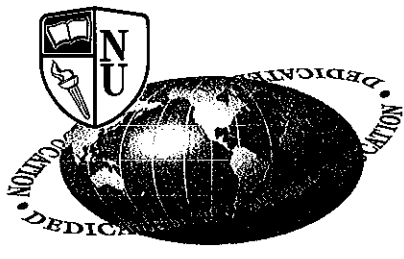
Suggestion: Make this provision inapplicable to distance-learning and correspondence law schools.

Thank you for the opportunity to respond and we look forward to working with the Committee to improve the quality of legal education offered through distance-learning programs.

Sincerely,



Robert J. Barth
Associate Dean



**NEWPORT
UNIVERSITY**

Corporate Office: 3720 Campus Drive, Suite #100 • Newport Beach, CA 92660-2658 • (949) 757-1155

June 7, 2007

Saida Salfiti
Office of Admissions
180 Howard Street
San Francisco, California 94105

Re: Proposed Rules Regulating
Correspondence Law Schools

As Dean of Newport University School of Law, I am concerned about the effect and impact of the proposed rules regulating correspondence law schools in California. Newport University is a correspondence law school offering Bar and non-Bar Juris Doctor degrees through independent study.

The proposed rules would primarily impact correspondence schools and their students by eliminating non-Bar Juris Doctor degree programs. It is my understanding that Section 1.04 (N) of the rules would limit schools to only those institutions that "qualify students to take the California Bar Exam." Newport University School of Law has students that have no intention to practice law but want a Juris Doctor degree in order to attain a promotion at work or for personal satisfaction. In point, we have had several students needing advanced degrees to become eligible for promotion who are in the United States Armed Forces. They have no interest in practicing law, but require an advanced degree for promotion and pay enhancement. A traditional law school setting does not work for these students as they frequently move and are stationed in places where it is impossible to attend law school. Instead they utilize our independent study means to attain their degrees.

Another type of correspondence school student is one who wants to earn a Juris Doctor degree for personal fulfillment. As an example, Newport University currently has an eighty-two year old woman on the Big Island of Hawaii in her third year of study. During World War II she studied at the University of California at Berkeley, but like many of her generation, once the war ended she settled into married life. However, her original career goal was to attend law school and this was something she promised herself she would succeed at doing. Due to her geographic location and her age, a

correspondence law school perfectly fulfills her ambitions. Although I concede that most law students want to take the bar exam and go on to practice law, this is not always the case and I believe Newport University and other correspondence schools offer a valuable alternative.

All of the students at Newport University that are in the non-Bar program are advised that they cannot sit for the State Bar Examination. There is no misleading them to believe otherwise.

Another area of concern is the physical requirement provided in Section 12.01(F) of the proposed rules that we provide the required library. Newport's students are scattered all over the world. Some use their county law library. Others use libraries in law offices. With the advent of the Internet, most legal codes and case law can be gotten with the click of a mouse. To require Newport to have such a library is onerous and would not benefit most of our students as they live nowhere near our offices in Newport Beach. This requirement should be eliminated from the regulations.

Another issue involved with the proposed rules is the authority of the Dunn Bill to go immediately to the Committee of Bar Examiners. It is my understanding that such legislation needs to be submitted to the California Office of Administrative Law first in order to have effect. To bypass this procedure could possibly result in making the proposed rules underground regulations with no effect.

I ask that you take these comments in earnest. If you wish to contact me I would be most happy to talk to you about my concerns.

A handwritten signature in black ink, reading "Jane A. Della Grotta". The signature is fluid and cursive, with a long, sweeping horizontal line extending from the end of the name.

Jane A. Della Grotta
Dean
Newport University School of Law



Lorenzo Patiño School of Law

UNIVERSITY OF NORTHERN CALIFORNIA

Lorenzo Patiño
Founding Dean
(1948-1983)

J. Leonardo Padilla
President
Board of Trustees

Daniel M. Wigon
Executive Dean

Anthony Marquez
Dean of Students

June 8, 2007

Saida Salfiti
The State Bar of California
Office of Admissions
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ADMSF@calbar.ca.gov

Dear Saida Salfiti,

We received your letter inviting us to comment on the Draft Rules Regulating the Registration of Unaccredited, Correspondence and Distance Learning Law Schools in California. Thank you for the opportunity to provide feedback.

Our response is organized into the following seven categories:

1) Response Time and Notice

Response Time

The response time required by the school should be increased to mirror the response time the Committee allows themselves. This will ensure that the school also has ample time to provide a thorough analysis and cogent response.

Specifically, we request an increase in the following response times:

- a) Challenging the appointment of a member of the visitation team: The proposed rules allow the school 10 days to object while the committee is allowed 30 days to respond to the objection. Here, we suggest the school also be granted 30 days to object.
- b) Accepting or Rejecting the Committee's Inspection Report: The proposed rules allow the school 15 days to accept or reject an initial inspection and 30 days to accept or reject a periodic inspection while the committee is allowed 60 days to respond to the school's acceptance or rejection. Here, we suggest the school also be granted 60 to accept or reject the committee's report.
- c) Correcting Deficiencies: The proposed rules allow the school 15 days after receipt of a written warning to provide proof of correction. Although the proposed rules state that the committee may extend the time for good cause, 15 days is still insufficient to attempt to correct the problem and/or make a case showing 'good cause.' Here we suggest the school be granted a minimum of 60 days to provide

proof of correction, with the possibility of an extension for good cause, which should be submitted for review at least 15 days prior to the exhaustion of the initial 60 days.

Notice

Also, we suggest the Bar provide 60 days advance notice, in writing, for an on-site audit of the school. The notice should include a list of documents that the school should have readily available for the inspector's review.

2) Fees

We have grave concerns that the fees associated with the audit may severely hinder the school's ability to offer affordable legal education to its students. Although our school has been in business for over 20 years, it has never considered itself a money making business. Like many public service entities, the school's goal is not to make a profit, but to provide a low cost legal education to its students who share the cost of operating the school. Many of the students who reviewed these proposed rules echo this same concern. They and we do not want the school to be driven out of business due to the administrative overhead resulting from the committee's audits.

To this end, we are providing the following suggestions to help limit the costs associated with audits:

- a) Limit the team size to one person. The proposed rules state that the traveling team may be comprised of up to three people. However, one inspector should be able to gather ample information that can be later shared with the team. The proposed rules state that the purpose of the inspection is to review records, inspect the facility, observe class sessions and interview board members, staff and faculty. It is common knowledge that entities such as the Franchise Tax Board frequently send out one auditor to gather information from a business entity. Depending on the complexity of the audit, the auditor may then return with the information for a team review. The same method should be utilized here. The one inspector may want to photograph the facility and video record class sessions to facilitate later sharing with the team. If the information is gathered using these methods, then the team could meet via teleconference and distribute the material electronically to further limit costs.
- b) Conduct telephone interviews when possible using conferencing technology. Conducting telephone interviews via a conference call would allow multiple interviewers to question school staff and students at mutually agreeable times. Because the interviewers do not have to be at a common location, travel expenses are avoided. This method would be especially appreciated by night schools, whose professors are often working professionals with schedules that may not permit them to be available during the on-site inspection period. Also, the students frequently have little time to stay after class or come early because they too often hold full-time jobs.
- c) Limit the inspector's travel distance to a 100 mile radius. This will result in lower travel costs and should avoid the need for over-night stays because the commute would be reasonable.

- d) Limit the number of on-site inspections. The proposed rules allow the committee to audit the school at least every five years or 'more frequently if the committee decides...' We suggest that onsite inspections occur no more than once every two years, except for good cause.
- e) Allow for a no-interest payment plan. We suggest providing a no-interest payment plan for audits that exceed \$2,000. This will help reduce of the risk of a school being put out of business due to the administrative costs of audits.

3) Admissions Policy

The proposed rules state that the school must maintain a 'sound admissions policy.' Because the term 'sound' is vague, we suggest that the admissions policy be described as follows: 'an admissions policy consistent with the standards established by Rule VII of the Rules Regulating Admission to Practice Law in California.' As you are aware, this rule requires 60 units of college level units, which may be satisfied by the CLEP exam.

4) The Granting of Degrees and the Retention Policy

Granting of Degrees

The proposed rules state that 'only law programs that qualify students to take the California Bar Examination may result in the granting of a J.D. degree.'

This phrase appears to prevent a law school from granting a J.D. degree to a student who does not wish to take the California Bar Exam. If so, this will adversely impact students whose purpose in obtaining a J.D. is other than the practice of law. Please be advised that we are not advocating nor have we ever advocated that non-bar candidates should be graded differently from those students who are actively pursuing admission to the State Bar.

Because a student who is not concerned with practicing law may not take First Year Law Student Exam, or may not pass the exam, they are thereby ineligible to take the California Bar Exam. In the past, we have allowed these students to continue their legal education because they clearly communicated that they did not intend to take the California Bar Exam and that they did not intend to practice law. Instead, they sought the degree for other reasons, which included but are not limited to: 1) career advancement, 2) analytical skill enhancement, 3) understanding how the law affects the individual's occupation, and 4) knowledge of law or knowledge for its own sake.

Therefore, we request that the objectionable statement be removed from the proposed rules.

Retention Policy

The proposed rules describe three conditions under which the school must dismiss a student, describing these students as: 1) 'obviously unqualified,' or 2) lacking a 'reasonable prospect of completing the degree,' or 3) having 'demonstrated they are not qualified to continue.'

Rather than using these vague terms, we suggest that references to unqualified students be replaced with: 'The school should only retain those students who meet the school's academic standards and retention policies and the State Bar's minimum requirements to study law.'

5) Student Complaints

While we agree that student complaints should be considered in your decision process, we would like an opportunity to review and respond to any and all complaints. If a law school review and response process is not established, then any law school may be subject to severe consequences based on complaints that may lack veracity or merit.

Thus, we suggest the establishment of a review process that includes the opportunity for the school to review, research and submit a response to complaints.

6) Library

We suggest a new provision that allows an unaccredited school to meet its library requirement by:

- a) Maintaining a physical library onsite, **or**
- b) Being in close proximity to a Law Library (10 miles or less), **or**
- c) Providing each student with internet access and a subscription service such as lexis.

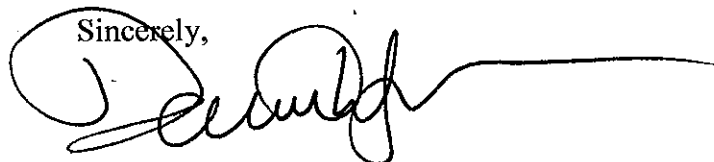
As you are aware, technological advancements have significantly affected how legal research is conducted by both students and practicing attorneys. As such, we find that the disparate treatment between unaccredited schools and distance and correspondence schools, which are not required to maintain a physical library, is without justification. All students can equally benefit from either a proximate library or an internet subscription service.

7) Unnecessary Language

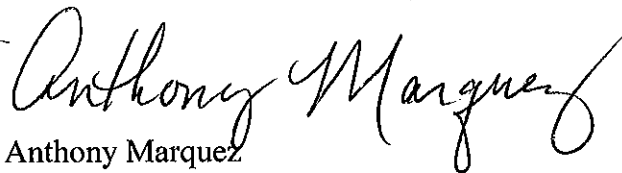
The proposed rules include the term '*exploit*' in the registration section. We recommend that this negative term either be replaced with a positive term or be omitted entirely, since it can be inferred that a law school that offers a sound educational program and complies with all applicable rules does not exploit students.

We look forward to working with you and your team during the coming years.
Thank you.

Sincerely,



Daniel Matthew Wigon
Attorney at Law
Executive Dean



Anthony Marquez
Attorney at Law
Dean of Students

ADMSF

From: Patterson, Stephanie [SPatterson@dca.lacounty.gov]
Sent: Monday, June 11, 2007 3:50 PM
To: ADMSF
Subject: Hearing Notice - Rules/Fees Regulating Registration of Unaccredited, Correspondence & Distance-Learning Law Schools

Hello All:

This e-mail is to express my disagreement with the above proposal.

Contact me if you have questions.

**Sincerely,
Stephanie Patterson
Investigator, Consumer Services
Department of Consumer Affairs,
Los Angeles County
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6/12/2007



CONCORD LAW SCHOOL

June 11, 2007

Ms. Gayle Murphy
Senior Executive
Committee of Bar Examiners
The State Bar of California
180 Howard Street
San Francisco, California 94105

Dear Ms. Murphy:

This letter responds to the invitation to comment on the California Committee of Bar Examiner's ("Committee") Proposed Rules on Registration of Unaccredited, Correspondence, and Distance-Learning Law Schools ("Proposed Rules"). These rules will implement legislation passed in 2006 that consolidates the oversight and regulation of unaccredited and correspondence law schools with the Committee effective January 1, 2008 ("Dunn Bill").

We are pleased with the Committee's start in implementing the Dunn Bill, which the Proposed Rules represent. Here we offer some general comments on that process and specific comments on particular parts of the Proposed Rules. We look forward to participating in a constructive way in the process as it moves forward.

General Comments

1. Concord Law School ("Concord") supports the imposition on all California law schools of appropriate standards and procedures to assure that a school:
 - a. Provides its students with programs of acceptable quality and consistent with the course of study that it purports to offer;
 - b. Provides full information about its program(s), including the requirements for completing a course of study or earning a degree, the curriculum, calendar, faculty, cost, and support services provided by the school; and
 - c. Well-serves the interests of the legal profession and the public by producing graduates who are qualified to become members of the legal profession and who will participate in serving the legal needs of California and its citizens.
2. Concord believes that the Committee of Bar Examiners is the appropriate place to locate the responsibility for the establishment and administration of such a set of standards and procedures. Consequently, we support the basic philosophy of the Dunn Bill.

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3. Concord believes that the Committee can establish standards and processes to accredit online or distance-learning law schools. In fact, our overall impression of the proposed rules is that they are themselves a substantial step toward an accreditation or approval process for all registered schools. While the proposed rules may establish something slightly less than a full accreditation system, they do establish much more than a mere registration system. "Registration" connotes that a school has signed up for something or has been added to a list. While the registrant may need to affirm certain facts to support its registration, there is usually little, if any, agency investigation or review into those facts in advance of registration. Registration is, or is close to, a ministerial act. "Accreditation" connotes adherence to a set of operational and quality standards, completion of a self-study or strategic plan, other processes to ensure continuing growth and institutional assessment, and periodic review by the accrediting agency. All of these aspects of accreditation are present in the "registration" system that the Committee is proposing:

- Proposed Rule 4.240 imposes a set of standards that schools must meet;
- Proposed Rules 4.242, 4.243, and 4.244 establish a system of annual filings and period review that serve the purpose of assuring that a registered school is operating in compliance with those standards;
- Proposed Rule 4.243 requires a self-study;
- Proposed Rule 4.245 requires advance approval of major changes; and
- Proposed Chapter 4 provides a process for sanctioning schools that operate out of compliance with the Rules.

The similarities between the ABA Standards for the Approval of Law Schools and, particularly, the Rules Regulating the Accreditation of Law Schools in California are striking. Indeed, the standards (A through L) in Section 2.1 of the California accreditation rules are identical in name and, basically, in content to the proposed "registration" rules for correspondence, distance learning, and unaccredited schools.

We know that this process is unfolding in a period of challenge and change for legal education. It will take more than this first step to make a sensible set of rules and procedures for 21st century for the variety of law schools that operate in California. When one considers the fact that graduates of the current group of correspondence schools, which the regulatory scheme infers are less well-qualified to offer legal education ("registered," not "accredited;" additional requirement of the FYLSE), regularly outperform the California accredited schools on the bar exam, then the case for continuing study and change becomes even more manifest.

We appreciate the particular concern for the FYLSE and General Bar Examination performance of the unaccredited residential schools, which was a motivating factor for Senator Dunn's original bill. We believe that the best approach to dealing with that issue is to move expeditiously to develop one set of standards and one process that can apply to all non-ABA approved law schools and then impose that set of standards across the board. Standards can be written that can apply reasonably well to

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both residential and distance or correspondence programs, and when necessary separate ways of getting at the same issue can easily be developed. Indeed, such standards or the guidelines that would interpret them could include expectations around outcomes on the California Bar Examination that would directly address Senator Dunn's concerns.

Concord would be pleased to participate in a process leading to the development of a new, restated, and unified set of rules. We do understand the complexity of the undertaking and the fact that statutory as well as regulatory changes would be required. That complexity should not, however, delay a modernization of the framework for the regulation of something as critical to the public interest as a sound system of legal education in the state that produces enough of the right kind of lawyers to do all of the legal work that needs to be done in California.

Specific Comments

Title

We wonder whether there is a reason not to list the categories of registered schools in alphabetical order, so the title would be "Rules on Registration of Correspondence, Distance-Learning, and Unaccredited Law Schools." Such a change would also require conforming changes the few places that this list appears in the rules. The use of "registered law schools" is helpful and obviates the need to always list all three types of schools.

Rule 4.202 [Guidelines]

Since the Guidelines that the Committee plans to publish will help flesh out the meaning and the proposed application of the Rules, it would have been helpful to see a draft set prior to submitting these comments, concerns, and suggestions. This is particularly true for any guidelines that would speak to transition issues. We look forward to the opportunity to amplify, withdraw or add to these comments when draft Guidelines is published.

Rule 4.204(B) and (C) [Definitions – "distance-learning law school"]

Concord applauds the Committee for proposing definitions that distinguish correspondence and distance-learning law schools. Today, indeed, they are quite different programs of legal education. Our comments:

1. The rules should provide a fuller definition of "distance-learning law school." At the federal level, the touchstone is that technology be used to support "regular and substantive interaction" between and among students and instructor, whether synchronously or asynchronously (see 34 CFR 600.2). It is necessary, but not sufficient in our view, that technology is used to provide an interactive classroom experience. But, the definition should go further and

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require support for other ways of encouraging, promoting or requiring student-student and student-faculty interaction.

2. The definition of distance-learning law school should not be limited to one that “provides interactive classroom study using Internet technology.” Here, too, the federal regulations are helpful. They state that the course should be offered principally through the use of one or a combination of technologies that include but goes beyond or outside of Internet technology alone.

Rule 4.204(F) [Definitions – “professional law degree (other than J.D. degrees)"]

Concord believes that further work is needed on this section. We understand that the definition of “professional law degree” is part of the way that the Committee defines its jurisdiction and scope of authority. We also understand that the definition aims, at least in part, at perceived problems arising when a registered law school gives a degree to students who have not met the requirements to sit for the California Bar Exam without making it clear – in materials promoting that program, in the name of the degree itself, and on the diploma – that the degree is not a bar-qualifying degree. We understand, and we agree that the proposed rules should find an effective way to deal with the matter.

We all know that many individuals earn a J.D. degree who do not intend to sit for the bar examination and do not intend to practice law. While the J.D. makes them eligible to take the bar, they want to use the credential and the underlying education that it represents for a purpose other than the formal practice of law. That happens in all law schools, including registered ones. Some of these individuals, in fact, do take and pass the bar exam and become bar members, even though they do not intend to practice law and do not do so. The large number of “inactive” members of the California Bar is some evidence of this reality.

Nonetheless, the education that they have completed and the degree that they have earned qualifies them to sit for the bar exam and, if they pass that exam and meet other requirements, for admission to the profession. A course of study and the degree that it represents that does not so qualify them is, fundamentally, a different degree. It should have a different name than “Juris Doctor.” So, we agree with the basic philosophy of the proposed rules to limit the J.D. degree to a course of study that meets the educational requirements that the Committee imposes as a condition of eligibility to sit for the California bar exam.

That said, law schools, including registered schools, do and should be permitted to give degrees other than the J.D. The proposed rules allow that to happen. The conversation is really around what names can be attached to those degrees that signifies both that the degree is a law degree given by a law school and the fact that the particular degree does not qualify a person to sit for the California bar exam.

CONCORD LAW SCHOOL

We see these degrees as falling into two categories: (a) post-J.D. degrees and (b) non-J.D. degrees. In the first category are degree programs like LL.M. programs which typically require the J.D. (or equivalent foreign degree) for admission. In the latter category are professional law degrees designed to provide an understanding of law and the legal system in a professional school environment to individuals who want the training and foundation that such a course of study offers and the degree represents but who, for any number of reasons, do not wish to earn a J.D. or cannot qualify for that degree program.

In the case of Concord Law School, in that second category of programs we offer the Executive Juris Doctor (EJD) degree. It is different from our J.D. program. It is shorter (three years, not four; 72 units, not 96 units required), more flexible (fewer required courses, different and more relaxed time requirements for completing a course), and does not require passing the FYLSE. The EJD program is not aimed at individuals who want to practice law; rather, it is aimed at individuals who want to deepen their understanding of law and how the law operates in our society in order to enhance their own skills and understanding. We agree that it would not be appropriate for us to give a J.D. degree to a person who has completed the requirements for an EJD degree.

We believe that the name that we have chosen for this non-J.D. degree program is entirely appropriate. It is an EJD program and degree, not a J.D. program and degree. The different names reflect the fact that the programs are different. We market the degrees as two separate programs, and the diploma/transcript state the particular degree that the graduate has earned. We have different disclosure forms for the programs, and the EJD disclosure form states clearly that the degree does not meet the requirements to sit for the California bar exam.

We believe that the EJD provides professional law education and that there is an increasing need and demand for programs like this.

The proposed rules do not take the position that a registered school cannot offer an EJD as a non-bar qualifying professional law degree program. They may, however, require us to seek approval to use that name, since it is not one of the degree names specifically enumerated in the proposed rule.

Presumably, we could offer the exact same program that now leads to an EJD degree and call it either an "LL.B." or "MLS" degree. These are the two degree names in proposed Rule 4204(F) that the Committee appears to think are most appropriate for non-J.D. degree programs like Concord's EJD program. Neither degree name, in our view, captures the educational program that non-J.D. degree programs offered by law schools represent and each introduces confusion for students, the profession and the public that is worse than the problem that the Committee seeks to address.

"LL.B." is a degree that a close equivalent to the J.D. degree. Through at least the 1960s, it was standard name in the United States for the course of study that now

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leads to a J.D. degree. It is still a common name for the first law degree in a number of common law countries, and often in those countries the LL.B. is the first post-secondary degree that a student may earn (the equivalent of an undergraduate degree with a major in law). The "MLS" degree, while it is sometimes the name given by a law school to non-JD programs like Concord's EJD, is also often, perhaps most often, the name given to a post-baccalaureate degree program offered in the legal studies, criminal justice, or other social science unit within a college or university. It is not, in that sense, a professional law degree, but rather graduate school study in a law-related area.

We suggest that the Committee consider restating this section. One approach would be to divide professional law degrees into three categories: Juris Doctor (J.D.), post-J.D., and non-J.D. The J.D. degree should be limited to degree programs that will qualify the degree holder to sit for the bar exam in California. Post-J.D. should be programs that require a J.D. or equivalent for admission. This is graduate law study. The degrees falling into this category would be the Master of Laws (LL.M.) and Doctor of Juridical Science (J.S.D. or S.J.D., commonly).

Non-J.D. degrees should be programs in a law school that provide education in the law but are not aimed at individuals who will seek admission to practice in the state. The rules should provide that the degree name be different than "J.D.," and the program description should make clear that the program does not qualify the degree holder to sit for the California bar exam. Schools may offer such programs under a variety of names. We would continue to offer the EJD, understanding that an "EJD" and a "JD" are, on their faces, different and those differences would be confirmed in the degree descriptions and on the diploma. Both the non-J.D. and post-J.D. degrees should be able to carry a reference to a focus area, for example "LL.M. in Taxation" or "EJD in Health Law."

Another issue for the Committee to consider is whether it must or wishes to assume responsibility for schools that may want to offer solely post-J.D. or non-J.D. programs, and not the J.D. degree itself. If a school wishes to provide post-law school training in specialized areas such as taxation, health care, international business, and the like and to give an LL.M. degree, must it register with the Committee? Or, is the Committee able to limit its jurisdiction to schools that want to give a J.D. and perhaps other degrees, as well? Further, does the Committee intend to state requirements and standards for degrees other than a J.D.? Certainly the Committee does not intend that a LL.M. degree must be four years in duration (with 864 hours of study each year).

We agree that confusion about a non-bar qualifying degree needs to be eliminated. In our view, "LL.B." does not eliminate that confusion. "MLS" eliminates the confusion but introduces a different problem because it confuses law school programs with programs offered in other parts of a University. Finally, the proposed rules overall need to clearly state which standards and processes apply to which professional law degree programs of a registered school.

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Concord has established a service mark for the name “Executive Juris Doctor (EJD)” degree. If it would be helpful, Concord will give up that service mark so that any school wishing to offer a professional degree in law that is not a J.D. and does not qualify the holder to sit for the California bar exam may do so. We think it a very accurate descriptor of the education that we are seeking to provide.

Rule 4.205 [List of registered schools]

Concord comments that the Committee’s list of registered schools should have separate categories for “correspondence” and “distance-learning” schools, in line with the definitional differences that the proposed rules establish between those different types of law school programs. The registration documents should require a school to indicate whether it is registering as one or the other. The Committee may want to consider, then, using these categories in the lists of schools that it produces, including the reports of FYLSE and bar results.

Rule 4.208 [Waiver of requirements]

Concord comments that the Committee may want to consider adding language that would reserve its authority to grant multi-year waivers, should appropriate situations arise. The proposed rules require that any waivers granted be renewed annually.

Rule 4.209 [Fees]

Concord agrees and accepts the responsibility to pay fees reasonably related to the cost of administering the regulatory scheme that is being put into place. While no one wants to pay higher fees, we encourage the Committee to set fees at a level that will enable it to have the staff, the resources to maintain an appropriate website, and to do the work needed to review the annual filings of law schools to assure that the goal of improving the quality of legal education in the state is well-served.

In particular, we believe that the interests of potential students, students, the bar, and the public in general would be well-served by a place on the State Bar website that reports information about schools (tuition, enrollment, faculty, bar and FYLSE passage data, contact information, and other basic information, etc.) in a way that makes that information easy to access and easily comparable.

Rule 4.222 [Multiple locations]

Concord comments that this rule should not apply to distance-learning or correspondence schools.

Rule 4.240 [Standards]

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Concord supports the imposition of requirements that will describe a sound program of legal education that all distance learning and correspondence schools, as well as residential schools, must meet in order to be able to confer a J.D. degree.

We note consistent with our general comment above, that the Standards that are set out are identical to those imposed on California Bar Accredited schools. Unless the Committee intended to have different levels of “soundness” for registered and accredited schools, the reality is that these registration rules are adopting a review and approval system which, as soon as is practicable, should be rationalized with the accreditation rules into one system for the approval of non-ABA schools in California. The public interest and the interests of the legal profession would be well served by such a step. A first step in that direction would be the development of a standard or a guideline/interpretation for all non-ABA approved law schools in California to state that maintaining a sound program of legal education includes achieving pass rates on the bar exam which demonstrate the school’s educational effectiveness relative to other non-ABA approved schools (e.g., maintaining a pass rate that is no more than a set number of percentage points below the average for non-ABA approved schools).

On subsection (H) [Library], Concord notes that the Standards on their face apply to correspondence and distance-learning law schools. We agree that such schools, including Concord, can and should provide access to legal information resources for students and faculty. We look forward to the publication of draft Guidelines stating what those requirements might be and to an opportunity to comment on them before they are approved.

Rule 4.241 [Disclosure statement]

Concord Law School supports a system that requires substantial disclosures about the program and the school to potential students, students, the profession and the public. Indeed, we hope that the Committee will find a way to report this information to the public in a way that provides comparable information for all law schools. (See the comment to Rule 4.209 above).

On subsection (5), while correspondence and distance-learning law schools should not be required to report volumes in a physical library, it is possible to require disclosure of various types of legal information to which the school provides access for its students and faculty, such as the level of access to online legal database systems such as Westlaw or Lexis, and online law review databases such as Hein-on-Line. Concord supports the imposition of such a requirement.

On subsection (A)(7), Concord understands that student/faculty ratio is one of the disclosures required by the Dunn Bill and so must be covered in the proposed rules. There is a great potential here for misleading potential students and the public, however, and Concord urges the Committee to consider creative ways of satisfying the law’s mandate so that useful information is presented.

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Faculty who teach one course make different contributions than faculty who are full-time and teach a number of courses, for example. A low ratio does not necessarily mean more opportunity for contact, smaller sections in the first-year courses, or anything else if school A has all adjuncts each teaching one course and school B has mostly full-time faculty teaching more than one course. Important facts include the number of full-time faculty, the ratio of full-time faculty to students, size of first-year classes, and average enrollment of elective courses. The Committee is no doubt aware of the complicated way that student/faculty ratio is computed under the ABA Standards (see ABA Standards, Interpretation 402-1). While that methodology is not perfect, it illustrates that a student/faculty ratio that is simply the ratio of the headcount of anyone who is a student and anyone who is a teacher does not provide particularly helpful information.

On subsections (B) and (C), Concord encourages the Committee to consider allowing schools to develop alternative ways of assuring that the disclosure statement is provided to new and returning students and that receipt is acknowledged. Technology allows that to be done in a manner that provides at least as much assurance that the disclosure statement has been read as a paper copy that is signed and returned provides.

Rule 4.243 [Self-study]

Concord accepts the notion that in a law school review/approval system, the requirement of a self-study or planning process is typical and appropriate. Concord already has a process for regular self-assessment in line with its obligations to the DETC and the school's goals for continuous self-improvement. We are less certain about the appropriateness of such a requirement in a pure "registration" system. Moreover, the proposed rule calls for the self-study to use the form provided by the Committee. Good self-studies and good planning processes can take a number of forms, and we would hope to have an opportunity to comment on whatever form or format the Committee would seek to impose. Perhaps better than a prescribed form would be a list of matters that the self-study must address.

We also respectfully suggest that, at least in a simple registration model, that schools that have prepared self-studies for regional or national accreditation bodies be permitted to file those with the Committee rather than having to undertake a different process or reformat that self-study to fit a form prescribed by the Committee.

Rule 4.244(F) [15-day time period to accept or object to an inspection report]

Concord suggests that the 15-day period to review the inspection report and note objections is perhaps too short and might be extended to 30 days. If the Committee wishes to know whether a school has objections and will submit a letter stating them with supporting documents within 15 days, with an additional two weeks to file the response, that would be an alternative way to assure that the process moves along in a timely manner.

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Rule 4.246(F) [Major change – multiple locations]

Concord comments, consistent with our comments above at proposed Rule 4.222, that making the “sponsoring or offering for ... credit” a major change if the program or class will meet more than ten miles from the site of the law school is a concept that does not work well for distance-learning or correspondence law schools. The proposed rules do not include a definition for “location.” In this case, the proposed rule applies to a “class.” Is that one meeting of a class, some percentage of the class meetings or an entire class or course?

An easy solution would be to state that this definition of a major change does not apply to correspondence or distance-learning law schools, but it would also be possible to establish certain thresholds for the amount of work or activity that can take place at a location more than ten miles from a school’s campus or home office before it becomes a major change requiring advance approval.

We also note the absence of a standard that addresses other basic services that a law school should provide to its students, such as academic advising, career services, and other basic support for students and student activities. We recommend adding a standard that requires schools to provide support for students and basic student services at a level consistent with the school’s mission.

The faculty, administration, students and graduates of Concord Law School thank the Committee and the staff for the hard work and creative effort that went into the development of these proposed rules. Repeating a theme introduced at the beginning of these comments, Concord supports the adoption and enforcement of rules that will assure that law schools allowed to operate in California are providing sound programs of legal education for the benefit of their students, the legal profession in the state, and the broader public interest. We would be pleased to work with the Committee or the staff in any way that would be helpful or constructive.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry A. Currier". The signature is fluid and cursive, with a large initial "B" and "C".

Barry A. Currier
President and Dean

INDEPENDENT LAW SCHOOL ASSOCIATION

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June 12, 2007

Saida Salfiti
Office of Admissions
180 Howard Street
San Francisco, CA 94105

via FAX (415) 538-2304 plus mail

PUBLIC COMMENT on Proposed Rules Regulating Registration of Unaccredited, Correspondence and Distance Learning Law Schools in California to be established pursuant to SB 1568 (Dunn) effective January 1, 2008.

The Independent Law School Association (ILSA) is the voice of about 20 community-based alternate-affordable law schools that provide the only **ACCESS** for many ethnic/racial minorities and women to study law after working all day to raise their families. The Committee of Bar Examiners (CBE) Draft proposals impose essentially the same expensive reporting requirements on unaccredited schools that are now in place for CBE accredited schools. Accredited schools have more expensive libraries, which few students ever use, but their students are exempt from the unfair **Baby Bar** (FYLSX).

Under the new law, CBE will completely control the standards of both accredited and unaccredited schools. Therefore, we recommend **elimination of the Baby Bar** to level the playing field between rich and poor.

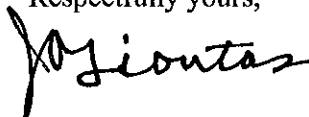
Unaccredited schools now obtain their degree-granting authority via the Bureau for Private Postsecondary and Vocational Education (BPPVE) in accordance with the provisions of California Education Code(s) 94900 and 94915. **It is not clear where law schools accredited only by the Committee of Bar Examiners currently get any degree-granting authority,** but they are granting Juris Doctor degrees.

Business and Professions Code Section 6046 states that CBE has the power: "To examine all applicants for admission to practice law, (b) To administer the requirements for admission to practice law.." **CBE has no statutory power to confer degree-granting authority to law schools or to accredit law schools.**

Please cite **statutory** authority for accrediting law schools and giving either accredited or unaccredited schools degree-granting authority. I could not find such authority in SB 1568.

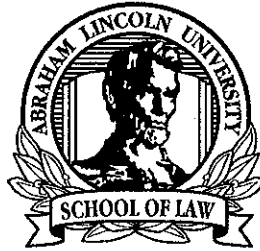
Traditionally, education belongs in the **legislative** arena, NOT in the **judicial** branch. **It seems that SB 1568 creates a serious separation of powers problem that will have to be resolved by the Supreme Court and the Legislature.**

Respectfully yours,



James A. Liontas
President

cc: Governor Arnold Schwarzenegger and Chief Justice Ronald M. George
ILSA schools and various legislators



**ABRAHAM LINCOLN
UNIVERSITY**

16 June 2007

Gayle Murphy
180 Howard Street
San Francisco, CA 94105

Re: Proposed Registration Rules

Dear Ms. Murphy,

Thank you for all the work you do. It was evident from the Public Hearing on June 15th, that you and your staff work very hard to support the work of the Committee of Bar Examiners. I write to express a concern about possible changes suggested by the Dean of Concord Law School. Although his submission to you was not made public, he did mention the Code of Federal Regulations definition of 'telecommunications.' The definition does not directly apply to the situation of some currently unaccredited law school. Specifically, Abraham Lincoln has a hybrid delivery of our education since we permit local student to come to our broadcast studios. This is much the same as TV programs that have a 'live audience.' It is my hope that the final version of the Registration Rules would permit ALU to continue operating with our live, interactive broadcasts as I believe there is solid educational pedagogy that supports this. Students are more engaged when they can immediately interact with the professors, whether online or in person.

Please find enclosed proposed language that incorporates the CFR definition, yet still allows for a hybrid delivery.

Sincerely,

Dr. Daryl Fisher-Ogden
Dean, School of Law

Cc: Hyung Park, President

Public Comment on Registration Rules

Current Language

Rule 4.204 (C) A “distance learning law school” is a law school that has its primary administrative offices in California, conducts and provides interactive classroom study using Internet technology, and requires at least 864 hours of preparation and study per year for four years.

Proposed Language

Rule 4.204 (C) A “distance learning law school” is a law school that has its primary administrative offices in California, conducts and provides interactive classroom study using Internet or other telecommunications technology, and requires at least 864 hours of preparation and study per year for four years. Telecommunications technology includes television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite; audio conferencing; computer conferencing; or video cassettes or discs.

Daryl Fisher-Ogden
Dean, School of Law
Abraham Lincoln University

RULES ON REGISTRATION OF UNACCREDITED LAW SCHOOLS

THIS RESPONSE IS BY PACIFIC WEST COLLEGE OF LAW
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Overview

It is not illegal to be an unaccredited Law School in the State of California. Prior to January 1, 2008 unaccredited Law schools were governed by both the Bureau of Private Postsecondary and Vocational Education (BPPVE) and the State Bar of California. Unaccredited Law Schools in California have always had to be registered with the State Bar of California, provide annual reports to the State Bar of California, provide disclosure statements to their students, and abide by the laws set forth in the Business and Professions Code of California. The unaccredited Law Schools had to also abide by the Education Code in California through the Bureau of Private, Postsecondary and Vocational Education. The unaccredited law schools also had to submit an annual report and pay fees to the BPPVE.

Currently a law school can grant a legal education to a student by giving them academic credit for the degree under the Education Code of California. To take the bar exam a student must receive adequate residency from the State Bar of California under the Business and Professions Code.

As of January 1, 2008, unaccredited law schools are to be governed by the State Bar of California unless the degree does not lead to a professional law degree.

Accreditation by the State Bar of California is a voluntary act by the Law School it is not a required act. An accredited by the State Bar of California Law School benefits in being able to have its students complete their legal education and take the Bar Exam. California Bar Accreditation is a prerequisite to applying for Western Association of Schools and Colleges (WASC) accreditation which allows a school to obtain Federal and State Student loans and grants. An unaccredited law school therefore should be the minimum standard for legal education in California.

There are three primary accreditations available for Law Schools in the State of California, Committee of Bar Examiners Accreditation (CBE), of which the primary benefit to the student is the exemption from having to take and pass the First Year Law School Exam (FYLSX), Western Association of Schools and Colleges (WASC), the primary benefit of this accreditation to the law student is the availability of Federal and State student loans and grants and the American

bar Association (ABA), the primary benefit to the law student is that they are able to take any bar exam in the country upon graduation.

The benefit to the People of the State of California to have unaccredited law schools is primarily cost effective education, less restrictive admission requirements, flexible class times and a second chance for those students who did not fair well at an accredited law school. The detriment to a student who attends an unaccredited law school in California is that the student must take and pass the FYLSX before he or she can take the general bar exam or receive residency for his time in law school. Unless the student is a transfer from an accredited law school and have matriculated into their second year.

Studies have indicated that minority students fair better at these less elite colleges than at traditional accredited law schools. The population of unaccredited law schools is mostly minorities. This is probably driven by the published results of passage rates per gender and race put forth by the State Bar of California. Consistently the statistics indicate that white males followed closely by white females have the highest passage rates on the bar exam. Slightly behind them are Asian's with a larger gap then to Hispanics and a significant drop to black students. These statistics tell a law school who to market for and admit if the school wants a higher bar passage rate. This race gap was addressed by allowing those less desirable students an opportunity for a legal education and profession.

Most unaccredited law schools are very small in student population and administration and are labors of love more than for profit business minded concerns. Unaccredited law schools are not entitled to Federal or State student loans or grants.

The currently proposed rules increase the burden upon unaccredited law schools in terms of cost and administration and remove a historical ability to grant the Juris Doctor Degree to all students. The current proposed rules are so similar to the rules for accreditation that the lines between the two types of colleges are blurred. The current proposed rules are in fact rules of accreditation not registration. While the burden on the school is increased as if the school is accredited, the school fails to receive any benefit of accreditation from the new proposed rules.

Overall the three major concerns the new proposed rules present are:

1. Sarbines-Okley Act violations (SOX)
2. Unknown, undisclosed, undefined and open ended clauses which increase liability and operating cost for the unaccredited law school
3. Clauses which allow arbitrary and capricious acts by the State Bar and a lack of notice and opportunity to be heard concerning disputes,

Sarbines Oxley Act violations.

SOX law is a criminal and civil act which makes officers directors and consulting professionals liable for contingent hidden debt which may cause a loss of assets for a business entity. In plain terms SOX is designed to penalize those individuals who lessen the value of an investors shares by failing to disclose contingent liabilities. While the Enron case is the most famous case concerning SOX and may lead one to believe that the entities involved must be large corporations that is simply not true SOX also applies to small law school corporations also.

The inability of a unaccredited law school to grant a Juris Doctor degree will create a SOX liability for each unaccredited law school under the proposed rules.

Currently students must pass the FYLSX within 3 tries of completing their first year of law study to be given residency for all their time at an unaccredited law school. A student at an unaccredited law school will complete his first year and then take the FYLSX (offered only in June and October) the student may continue on with his or her legal education for another year and one half while making three consecutive attempts at passing the FYLSX. In other words, currently a law student who does not pass the FYLSX within approximately 18 months after their first year and then pass on a fourth or more attempt, they obtain residency for one year and have to complete three more years of residency law study to be eligible for the General bar Exam. It is important to note that this rule is conspicuously absent from the proposed rules.

These students could do this because they were always obtaining credit for their Juris Doctor Degree. With the proposed rule that the Juris Doctor Degree be changed into a professional degree from its traditional academic degree (proposed rule 4.204 (f)) then those students who fail in their three attempts would be deemed to have demonstrated that they are not qualified to continue law school (proposed rule 4.240 (f)) and would be ineligible for the Juris Doctor Degree and thus would be ineligible to take the General Bar Exam. In other words a student who had completed two and one half years of law study (out of the four required) would be dismissed from the unaccredited law school and would not be eligible to take the General Bar Exam.

If the proposed rules will be enforced in a manner as set forth herein then most, if not all, unaccredited law schools will cease to exist in the State of California.

This is most likely the reason why the current rule of three tries on the FYLSX is conspicuously absent and why it is proposed that the academic degree known as a Juris Doctor is now to become a vocational or professional degree.

Obviously unaccredited law schools will be in litigation from any student who continued law study after their first year without passing the FYLSX. This randomly activated hidden contingent liability will trigger SOX liability.

Other SOX issues are the lack of disclosure of what cost a law school will now be faced with, along with open ended clauses create contingent liabilities which may trigger a SOX violation, making the owners, attorneys and accountants civilly and criminally liable who failed to inform shareholders of the contingent liability. It is understood that these may be presented in guidelines that will be addressed after the rules are adopted (this aspect is simply poor business to ask for approval on one half of an issue without knowing the other half which is the details).

Unknown, undisclosed, undefined and open ended clauses.

Undefined item: Is the Juris Doctor Degree to be granted to only those students who attempt to take the General Bar Exam or only to those students who pass the General Bar Exam? In other words does the new designation of a professional degree apply to persons who fail the General Bar Exam also? And if so how professional is that?

Suggestion: remove this item.

Unknown item: Changing the Juris doctor Degree from a academic degree to a professional degree violates the equal protection clause of the United States Constitution in that the remainder of the country deems the Juris Doctor Degree to be an academic degree and not merely a professional degree. Therefore students who arrive in this State with a Juris Doctor but did not attempt to take the bar exam would not be allowed credit for their degree.

Suggestion: remove this item.

Unknown item: Changing the Juris Doctor Degree from an academic degree to a professional degree violates the commerce clause of the constitution in that students from law schools outside of the state would not be allowed to use their Juris doctor degree unless they were or attempted to be an attorney.

Suggestion: remove this item.

Undisclosed item: Are the currently registered law schools to be grandfathered in?

Suggestion: They should be and the expiration date on the current BPPVE license for the degrees should become the due date for registration from the bar (this way no one losses rights already granted by the State).

Undisclosed item: Are unaccredited law schools still governed by the Education Code of California?

Suggestion: a review of the Maxine Waters Act and the Student tuition recovery fund should be made. The prior deposits by law schools into the STRF should be transferred to the State Bar and a new account should be set up the same way.

Undisclosed item: Does the rule concerning the FYLSX (Baby Bar Exam) that students must pass the FYLSX within 3 tries to be given residency for all their time at the unaccredited law school change. In other words, currently a law student who does not pass the FYLSX within approximately 18 months after their first year and then pass, they obtain residency for one year and have to complete 3 more years of law study. Or are these students now to be dismissed from law school and receive no academic credit? In other words are law schools to be only for professionals only and not for education?

Suggestion: The current system should continue because it provides consumer protection without denying a persons right to a legal education.

Unknown item: Is the Senior Executive an existing employee of the State Bar of California or is this a new position only for unaccredited law schools? (4.204(H))

Suggestion; Gale Murphy should be the Senior Executive for all purposes.

Undisclosed item: Is the waiver of requirements clause that the unaccredited law school must eventually comply with all requirements the same as accredited law schools? (4.208)

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undisclosed item; What are the reasonable fees? What is the hourly rate of the Senior Executive? Are these fees the same for accredited law schools? (4.209)

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

If so then they should be included at this time.

Undisclosed item: Where is the "Schedule of Charges and Deadlines"? Will these be the same for accredited law schools? (4.221 (A))

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Open ended Clause: The committee may make any inspection it deems necessary and the unaccredited law school must pay the fees and cost associated therewith, allows the State Bar to run successive inspections until

the unaccredited law school is bankrupt. Is this the same for accredited law schools? (4.221(B))

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Open ended clause, undefined clause: The law schools burden of establishing a "reasonable probability" of compliance with the rules? Is this the same standard for accredited law schools? (4.224)

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undefined item: Does the Master of Arts in Law Degree from Pacific West College of Law come within the proposed rules?

Suggestion: It should if the State Bar drops the designation of professional degrees and retains the academic idea of any degree that primarily concerns a legal education except for paralegal degrees.

Undefined item: What is the basis for a straight out denial of a registration application. (4.224(E)) ?? Is this the same basis as a finding that the school has failed to establish a reasonable probability that the law school is in compliance (4.224(A))??

Suggestion: remove 4.224 (E)

Undisclosed Item: rule 4.240 Standards, are these the same for accredited law schools??

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undisclosed item: The unaccredited law school must "identify and exclude (dismiss??) those students who have demonstrated they are not qualified to continue". (4.240(F)) What categories of unqualified are to be considered?? Is a school to dismiss a student if it believes the student be unqualified to graduate with a satisfactory gpa??? Or is this to dismiss students who the school believes will be unqualified to pass the General Bar Exam?? Or is this to dismiss students who the school believes will be unqualified to do murder trials and appeals or become a judge ?? Or is this to dismiss students who will be unqualified because of poor ethics?? Or is this to keep students who fail the FYLSX from continuing on with a legal education??

Suggestion: Like other degrees and other academic disciplines this needs to be limited to academic gpa.

Undefined item: Will a electronic law library like lexis or west law suffice since most students now use these forms of library or will a near by county law library suffice.(4.240(H))

Suggestion: Both should be allowed. This is the same library that all of the Judges currently use. If it is good enough for them it should be good enough for a law student.

Undefined item: How are the financial resources to be determined???

(4.240(J)) Is this the same requirement for an accredited law school??

Suggestion: It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Unknown item: in proposed rule 4.240 (M) is the phrase “. . . with these rules but submitting the required . . .” Is this a miss type and the word “but” should be by”??

Suggestion: Review the original notes on this item.

Undisclosed item: rule 4.241 Disclosure Statement, is this the current requirements??

Suggestion: the current disclosure statement requirements should be used.

Undisclosed item: how does a school disclose that it has been issued a notice of noncompliance?? (4.241(A) (9) Does a school give a student the actual notice?? And is the school allowed to give the student its reply to the notice?? And if the matter processed further thorough the system then does the school give the student copies of every paper involved??

Suggestion: The school should only disclose matters that have gone as far as a full and final hearing, not merely an inquiry.

Undefined item: Rule 4.241 (E) states that a school that is not in compliance must refund “all tuition” paid by a student without defining a time limit.

Suggestion: The refund should only cover the tuition paid for the period covered by the disclosure statement in question. The California Court of Appeals in Goehring v. Chapman University 121 Cal. App. 353 made a ruling in regards to this type of injury to a student and that decision should be reviewed and incorporated into the rules.

Undefined item: Rule 4.242 and Rule 4.243 say essentially the same things they are both to determine if the school is in compliance with the rules. Are these the same requirements for an accredited school?? A compliance report is more than mere registration. The existing requirement of an annual report is registration. A self study plan is an accreditation device with every accreditation agency. A self study plan is overly burdensome on the financial resources and administrations of unaccredited law schools and will increase the overhead cost of an unaccredited law school to become the same as an

accredited law school thus driving unaccredited law schools from California and denying the citizens of California the benefit of unaccredited law schools. Further a self study report will increase the burden on the State Bar to the same extent as an accredited law school and will thus be over burdensome on the State Bar.

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: Remove rule 4.243.

Undisclosed item: Rule 4.244 Inspections. Are these the same rules for an accredited law school and does the State Bar really need a team of three people to review the 25 current student files a unaccredited law school may have?? This increases the cost and burden on an unaccredited law school.

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undisclosed item: Rule 4.246 (E). Is this the same for an accredited law school and does this include Continuing legal education seminars, seminars for the public and academic exchange programs with foreign law schools???

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undisclosed item: Rule 4.260 Notice of Noncompliance. Is this the same for an accredited law school and is this a public document even though it is a mere inquiry??

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: It should not be a public document because it is at a mere inquiry stage at that point.

Undisclosed Item: Rule 4.261 Response to Notice of noncompliance. Is this the same for an accredited law school and is this a public document even though it is a response to a mere inquiry??

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: It should not be a public document because it is at a mere inquiry stage at that point.

Unknown item: Rule 4.265 Hearing Procedures. Are these the same as accredited law schools and there is no legal definition for a "responsible person" maybe this is a miss type and should read reasonable person?? In

any event the definition of relevancy is found at California Evidence Code Section 350 et. seq. and that is the law in California. There is no reason for the State Bar to create a new standard when one already exist.

Suggestion: Use the current evidence code.

Suggestion: It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Undisclosed item: rule 4.265 Hearing Procedures: places the burden upon the school to establish compliance with rules. Is this the same requirement for accredited law schools? How can a school establish compliance with a statement "The law school must maintain a sound program of legal education." (4.240(E))?? What is the level of burden of proof on the law school?? Is it the same for default judgments in California?? Is it the same for unlawful detainers in California?? Is it the same for contesting a deed to real property in California?? Is it the same for a murder trial in California??

Suggestion: It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: If the burden is on the law school to establish that it has meet requirements placed upon it by the State then the burden should be at the lowest legal limit which is the burden of proof used in default judgments.

Undisclosed item: Rule 4.266 Committee action following hearing. Is this the same standard as an accredited law school?? Does the phrase "entire record" include irrelevant evidence?? Does the phrase "entire record" include student complaints that the bar would not intervene in?? (4.206)

Suggestion: It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: It should only be based upon relevant evidence that was received in a full and fair hearing the same standard for collateral estoppel.

Arbitrary and capricious acts by the State Bar and a lack of notice and opportunity to be heard concerning disputes

Potential arbitrary and capricious act: What is the basis for a straight out denial of a registration application. (4.224(E))?? Is this the same basis as a finding that the school has failed to establish a reasonable probability that the law school is in compliance (4.224(A))??

Suggestion: remove 4.224 (E)

Potential arbitrary and capricious act: the lack of adequate time to respond to the State bar in rule 4.244 (D) ten days, 4.244 (F) fifteen days, 4.264 fifteen days, the State Bar is given thirty to sixty days for each of its acts. Why is there a differences in days to act??

Suggestion: the time limits should be mutual.

Potential arbitrary and capricious act: Rule 4.206 Student Complaints. Is this the same for accredited law schools?? Will the unaccredited law school be given a copy of the complaint when it is received by the State Bar?? Will the unaccredited law school be able to respond to the complaint??

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: The unaccredited law school will be denied its due process rights if it does not receive a copy of the complaint and it is denied and opportunity to respond.

Potential arbitrary and capricious act: Rule 4.266 (B) Committee action following hearing. Is this the same as an accredited law school?? Can the committee take an act that was not addressed in the hearing??

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: It should only be based upon relevant evidence that was received in a full and fair hearing the same standard for collateral estoppel.

Potential arbitrary and capricious act: Rule 4.266 (C) Committee action following hearing. Is this the same as an accredited law school?? Will the unaccredited law school receive notice that the committee is doing such and act?? If the committee publishes or disseminates its decision does the unaccredited law school get the opportunity to respond to that act or will the committee be required to send complete files to any party it disseminates information too?? In other words, will the unaccredited law school receive notice and have an opportunity to respond?? (Due process).

Suggestion; It should be disclosed where ever the rule is the same as an accredited law school and the rules if not overly burdensome on the school or the State Bar should be the same.

Suggestion: The unaccredited law school is entitled to due process.

Respectfully submitted
Dean Kevin O'Connell
Pacific West College of Law
Sunday June 17th 2007.

Please find the following:

1. My comments on the New Rules.
I have cut from the document parts that I have not had a comment on.
My comments directly follow the section of the rules being commented on.
My comments are in italics.

I have tried to be brief.

Thank you for your work.

David Stallings
Dean

**RULES ON
REGISTRATION OF UNACCREDITED, CORRESPONDENCE, AND
DISTANCE-LEARNING LAW SCHOOLS**

Rule 4.202 Interpreting and applying the rules
The Guidelines of the Committee of Bar Examiners govern the interpretation and application of these rules. The committee's comments on the **Guidelines** are part of the Guidelines.

1. Are there any guidelines released yet?

Rule 4.203 Citation
(D) "Inspection" means an on-site visit to a registered law school by an individual or a team appointed by the committee in accordance with rule 4.244, Inspections.

2. How is it decided which, an individual or a team?

Rule 4.208 Waiver of requirements
(A) A registered law school may request that the committee waive any rule or guideline except one mandated by law. The request must clearly show that the law school otherwise complies with the rules and can provide a sound legal education.

3. Are not the Rules the Law?

Rule 4.209 Fees
(A) The regulatory and oversight services provided by the committee are funded by reasonable fees that are set forth in the Schedule of Charges and Deadlines.

4. Are there any Schedule of Charges and Deadlines released yet?

CHAPTER 2. APPLICATION FOR REGISTRATION

Rule 4.220 Before applying to register

- An educational institution planning to offer instruction in law may request that the committee arrange a consultation visit to advise it on any matter, including whether the institution is ready to apply for registration or should make changes before doing so. The institution must agree to reimburse the committee for the costs of a consultation visit, including those of travel.

5. *Could this consultation visit take place at the Bar?*

If not what is the purpose of meeting at the school and not the Bar?

Why no consultations at the premises of the bar and save some fees?

If a law school has multiple locations that are **more than ten miles** apart by the most direct route, each location must apply for registration as a separate law school.

6. *Why 10 miles and not 9 or 11?*

(C) within sixty days of reviewing the application and any related inspection report and objections, register the law school for at least two years, subject to any conditions it deems appropriate, such as annual inspections at the school's expense;

7. *What is the most time of approval? The old 5 years?*

CHAPTER 3. RESPONSIBILITIES OF REGISTERED LAW SCHOOLS

Rule 4.240 Standards

A registered law school must at all times meet the following standards.

(A) Lawful Operation. The law school must operate in compliance with all **applicable** federal, state, and local laws and regulations.

8. *What are the applicable laws and regulations?*

Will the Bar issue a list of what it believes are the applicable?

Are they the same law required of Cal Bar accredited schools?

9. *The following words (in bold) appear Constitutional Vague.*

These seem uncertain, not susceptible of being understood.

And may be constitutionally infirm by reason of being vague.

A statute is "vague" if its prohibitions are not clearly defined.

10. *What other affairs?*

(F) Scholastic Standards. The law school must maintain sound scholastics standards and must as soon as possible identify and exclude those students who have demonstrated they are **not qualified** to continue.

11. *At what point does a student become "not qualified" and how does the student demonstrate they are not qualified and by who' standards. Taking into*

account the Americans with Disability Act how can this portion of the act be logically followed?

12. What is the difference between a Disability and a demonstration of being not qualified.

(G) Admissions. The law school must maintain a sound admissions policy. The school must not admit any student who is **obviously unqualified** or who does not appear to have a **reasonable** prospect of **completing the degree program**.

*13. Who is **obviously unqualified**? What is reasonable?*

Taking into account the Americans with Disability Act how can this portion of the act be logically followed? What is the difference between a Disability and a demonstration of being obviously unqualified.

14. Is the goal only to complete the program, pass the bar exam?

15. Or can a student, with advice from the school, decide on a goal of becoming more knowledgeable in the law?

Is the satisfaction of intellectual curiosity enough to allow a student to enroll?

16. Will a school be able to submit for Cal. Bar review a rejected student and in so doing pass any liability for denial of enrollment?

17. Can a possible unstated purpose of this clause be achieved by a school voluntarily disavowing any non-bar program, where the student intended to go to a sister state and take their bar exam?

As anyone doing this is obviously unqualified?

(H) Library. The law school must maintain a library consistent with the minimum requirements set by the committee.

18. Is there a missing line in this section?

From Rule 4.241 Disclosure Statement "

Re Disclose a list of items in library.

"This requirement does not apply to correspondence or distance-learning law schools."

(I) Physical Resources. The law school must have physical resources and an infrastructure adequate for its programs and operations. All law schools must, at a minimum, maintain their primary administrative offices in the State of California.

19. Must the office be a commercial space or can a home office be sufficient?

Rule 4.243 Self-study

Prior to a periodic inspection, or more frequently if the committee requests, a registered law school must reevaluate its educational program and submit a written self-study to the committee. The purpose of the selfstudy is to determine whether the school is in compliance with these rules and has achieved its mission and objectives. The law school must use the form provided by the committee and submit the required fee

20. Has the bar released the elements of a Self-Study?

(2) up to two additional members, who may be other State Bar staff, members of the committee, educational consultants, or representatives from a **registered** law school.

21. Would not all representatives from a registered school be:

- a. Biased against all correspondence schools.*
- b. Have a financial interest to close all competing schools*
- c. Have an interest in the intellectual properties and trade secrets of the school being inspected.*

(E) A person or team appointed to make an inspection must provide the committee with a written report of its findings and recommendations within sixty days of completing its inspection. Once it has received a report, the committee must send the law school a copy of it within sixty days.

22. How is it decided which, an individual or a team?

Rule 4.246 Major changes defined

The following are major changes:

(A) instituting a new division;

What constitutes a "New Division"?

CHAPTER 4. WITHDRAWAL OF REGISTRATION

Rule 4.260 Notice of Noncompliance

If the committee believes that a registered law school is not in **full compliance** with these rules, the committee will provide the school with a written Notice of Noncompliance that states the reasons for its belief.

What is full compliance?

Rule 4.261 Response to Notice of Noncompliance

Within fifteen days of receiving a Notice of Noncompliance, a law school must file a response demonstrating that it is in compliance or is taking steps to achieve compliance. The response must be submitted with the fee set forth in the Schedule of Charges and Deadlines.

At present an unsubstantiated worry.

This sets up the scenario of the Bar requiring a school explain itself over and over each time extracting a fee and thus diverting the resources of the school from needed school functions.

Rule 4.262 Committee action on law school response

(A) If the committee deems the response satisfactory, it will notify the law school within **thirty days**.

The author gives the Bar more time than the school to respond.

(B) If the committee deems the response unsatisfactory, it must schedule an inspection within thirty days. Upon concluding the inspection, the inspection team must submit its report to the committee within thirty days. The committee will send a copy of the report to the law school.

Rule 4.263 Committee action on inspection report

If the committee believes that the inspection report demonstrates that the law school is not or is not likely to **be in compliance with these rules**, the committee will notify the law school that it recommends probation or withdrawal of registration.

How can a school be “be in compliance with these rules” when the rules are vague?

Rule 4.264 Request for hearing

The law school may request a hearing before the committee within fifteen calendar days of being sent a notice that the committee is recommending probation or withdrawal of registration.

Rule 4.265 Hearing procedures

(A) Within sixty days of receiving a timely request for hearing, the committee will schedule a hearing at a time that is mutually agreeable to the committee and the law school.

(B) The hearing need not be conducted according to common law or statutory rules of evidence. Any relevant evidence is admissible if it is the kind of evidence on which responsible persons rely in the conduct of serious affairs. The rules of privilege in the California Evidence Code or required by the United States or California Constitutions will be followed. The law school has the burden of establishing its compliance with the Registration Rules.

(C) All parties may be represented by counsel.

Rule 4.266 Committee action following hearing

(A) Following a hearing, the committee will determine whether the school is in compliance with these rules. Its decision will be based on the entire record, including materials presented at the hearing.

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(B) The committee may take any action affecting the law school's registration that it considers appropriate, including termination of

registration.

(C) The committee, in its discretion, may do any or all of the following with respect to its decision:

(1) publish it;

(2) send it to the students enrolled in the law school;

This would be defamation.

(3) send it to the California Supreme Court;

(4) send it to the California Attorney General.

Rule 4.267 Probation

(A) If the committee decides that a law school has not complied or taken **adequate** steps to comply with these rules but has made **perceptible** progress toward compliance, the committee may place the school on probation for a specified time.

Constitutional Vague.

These terms adequate and perceptible,

seem uncertain, not susceptible of being understood.

And may be constitutionally infirm by reason of being vague.

A statute is "vague" if its prohibitions are not clearly defined.



FOR PROFESSIONAL STUDIES

June 18, 2007

Saida Salfiti
Office of Admissions
180 Howard Street
San Francisco, CA 94105
415-538-2184
415-538-2304 Fax

Dear Ms. Salfiti:

Attached please find my comments on the proposed Rules on Registration of Unaccredited, Correspondence, and Distance-Learning Law Schools. I am sending my comments as an email attachment today, June 18, 2007 and will also send them via fax to 415-538-2304. Thank you in advance for considering my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Fazio". The signature is stylized with a large, looping "J" and "F".

Jeffrey D. Fazio
Dean of Law
Southern California University for
Professional Studies, School of Law

Comments on Proposed Rules on Registration of Unaccredited, Correspondence, and Distance-Learning Law Schools

Submitted by: Jeffrey D. Fazio 
Dean of Law
Southern California University for Professional Studies
School of Law

Below are my brief comments on the Proposed Rules on Registration of Unaccredited, Correspondence, and Distance-Learning Law Schools (Proposed Rules). In the interest of clarity and concision, I have organized these comments in order of the Proposed Rule being commented upon and have only copied the text of the Proposed Rule where relevant.

Proposed Rule 4.204(C):

The term "classroom" is somewhat at odds with the concept of distance learning, which allows students and professors to interact extensively *without* a classroom. While the word certainly evokes scholastic endeavor, its use in the context of defining a distance-learning law school is unnecessarily restrictive; an effective distance-learning program need not contain any component labeled "classroom." I suggest removing the word "classroom" from this subsection so that the new subsection would read:

A "distance-learning law school" is a law school that has its primary administrative offices in California, conducts instruction and provides interactive study using Internet technology, and requires at least 864 hours of preparation and study per year for four years.

Proposed Rule 4.204(F):

The last sentence in this subsection states, "J.D. degrees may only be granted through completion of a law program that qualifies students to take the California Bar Examination." This statement essentially eliminates so-called "non-bar" J.D. programs in California. Unfortunately, the Proposed Rules do not make clear that this prohibition will be applied prospectively. As the Proposed Rules are currently written, the question is left open as to whether students currently enrolled in a non-bar J.D. program will be allowed to complete their studies without meeting the requirements of current Rules VII and VIII (e.g., 48-52 weeks for each year of study, take and pass the FLSX).

Requiring students currently enrolled in a non-bar J.D. program to comply with Rules VII and VIII would be unfair, and would potentially thwart their legitimate

expectations of being able to earn a non-bar J.D. degree. The Proposed Rules should clearly state that the requirement that J.D. degrees only be granted to students qualified to sit for the California Bar Examination only applies to students enrolling in J.D. programs beginning 1/1/08 and later.

Proposed Rule 4.240(H):

This subsection should contain a second sentence reading:

“This requirement does not apply to correspondence or distance-learning law schools.”

This is the same language used in Proposed Rule 4.241(A)(5) and it should be employed here for the same reason it is presumably used there: maintenance of a library does not enhance the effectiveness of distance-learning law programs and therefore constitutes a burden without a benefit.

ADMSF

From: Dean [dean@nwcunlaw.edu]
Sent: Monday, June 18, 2007 3:10 PM
To: ADMSF
Subject: Comments Re: Proposed Rules On Registration of Unaccredited, Correspondence, And Distance Learning Law Schools

Dear Committee Members:

I am writing to provide you with my comments pertaining to the Proposed Rules On Registration of Unaccredited, Correspondence, And Distance Learning Law Schools.

My comments are as follows:

1. Grandfather Provision

The new rules, it seems, should include a provision of some type that would clearly state that students enrolled at BPPVE approved law schools before January 1, 2008 have the right to complete their degrees according to the requirements in place before the change in oversight and regulation.

Therefore, I suggest that an item "C" be added to Rule 4.208 (Waiver of Requirements) of the Proposed Rules, with wording that could be the same or similar to the following:

C. Students enrolled in a degree program at a registered law school prior to January 1, 2008 may be granted the degree offered in such program upon completing the degree requirements in effect at the time of matriculation, provided there has not been an interruption in matriculation anytime after December 31, 2007.

2. Word Correction Needed

I noticed when reading the proposed regulations that the word "by" should be used instead of the word "but" in the second sentence of item (M) of Rule 4.240. It is apparent that the word "by" is the one that was intended for use in the sentence.

3. Word Correction Needed

I also noticed when reading the proposed regulations that the word "of" should be placed between the word "notice" and the word "an" in the first sentence of item (D) of Rule 4.244. It is apparent that the word "of" was intended for use in the sentence at that location.

I do very much appreciate the provided opportunity for commentary.

Respectfully,
Michael P. Clancey, Dean
Northwestern California University
School of Law

6/20/2007