

AGENDA ITEM

JULY 125

Proposed Rules of the State Bar, Title 4, Division 2 (Accredited Law School Rules) Following Public Comment

DATE: June 16, 2008

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

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

SUBJECT: Proposed Rules of the State Bar, Title 4, Division 2 (Accredited Law School Rules) Following Public Comment

EXECUTIVE SUMMARY

As part of The State Bar of California's ongoing effort to update its rules and conform the language to its new rules standards, a revised version of the *Rules Regulating Accreditation of Law Schools in California* was drafted. The proposed new rules, which are now titled "Division 2. Accredited Law School Rules", if approved by the Board of Governors, will become the second set of rules under "Title 4. Admissions and Educational Standards." There are only a few substantive changes in the new version of the rules. The new rules provide for: 1) provisional accreditation, rather than candidacy status, which is consistent with the process used by the American Bar Association for approving law schools; 2) elimination of one visit during the accreditation application processes, which is cost and time efficient without affecting the quality of the assessment; and 3) establish a probation process for schools that are having problems, but for which withdrawing their accreditation may be premature. Otherwise, the changes that have been made are not intended to change how the Committee accredits law schools.

The proposed new rules were circulated for public comment, and seven comments were received. As a result of those comments, several clarifications were made to the proposed new rules. None of the changes, however, were considered substantive; thus, a new period of public comment was not considered necessary.

The Committee reviewed the proposed new accreditation rules, as amended, during its May 2008 meeting and adopted them, subject to approval of the Board of Governors.

SUBJECT/ISSUE

Whether the proposed Division 2, Accreditation Rules, which would replace the *Rules Regulating Accreditation of Law Schools in California*, should be approved.

BACKGROUND

The State Bar of California initiated a Bar-wide review and revision of all its rules to conform them to certain standards and translate them into "plain English." With the assistance of Victor Rowley, who is assigned the primary responsibility for this project, and in consultation with Admissions and General Counsel staff with expertise in the area of law school accreditation, the format and language of the current *Rules Regulating the Accreditation of Law Schools in California* were re-written and are now titled "Accredited Law School Rules."

There are a few substantive changes between the current rules and the proposed new rules. The primary differences are:

- (1) The current rules provide for candidacy status and accreditation. The new rules provide for provisional accreditation and accreditation, which reflects modern terminology.
- (2) The new rules require one visitation in connection with consideration of an application for both provisional accreditation and accreditation. The current process of requiring a consultation visit and then an inspection visit before the Committee finally decides to grant provisional accreditation and accreditation is unduly time consuming and expensive.
- (3) The new rules provide a process for the Committee of Bar Examiners (Committee) to put a law school on probation in situations that do not justify termination of accreditation.

New *Guidelines for Accredited Law School Rules* to replace the *Factors and Comments Governing The Interpretation of The Standards* are also being prepared. The Committee will consider final adoption of the revised guidelines, which will be circulated for a public comment period, following final approval of the new *Accredited Law School Rules* by the Board of Governors.

The Board Committee on Regulation, Admissions and Discipline Oversight approved the Committee's request to circulate the proposed Accreditation Rules for a 45-day public comment period. The notice of public comment was sent to all California law school deans and registrars and posted on the State Bar of California's Web site. Seven comments were received, which are discussed below and are attached as Appendix A. In response to those comments, several changes were made to the proposed Accreditation Rules. None of the proposed changes are considered substantive to the degree another period of public comment is warranted. The proposed new Accreditation Rules with the modifications marked is attached as Appendix B.

Public Comments Received

1. Jill Van Slyke: States that while the public comment notice indicated that the proposed new rules had no fiscal impact, "there should be a fiscal benefit from the money saved by eliminating one school visit."

2. Dean L. Patrick Piggott:

A. Suggests that proposed Rule 4.160(H) be amended by adding this sentence to the end of the rule: "If the school proposes to offer less than 20% of classes at a location more than ten miles apart by the most direct vehicular route it is not a separate law school but must be approved under the Major Change section."

See amended rules for proposed change.

B. Is concerned that the second sentence of proposed Rule 4.105(N) might be interpreted to apply to accredited law schools. This proposed rule defines "unaccredited fixed-facility law school".

See amended rules for proposed change.

C. Is concerned that law schools are not being provided adequate guidance as to when they may be found in violation of proposed Rule 4.160(G)(Admissions).

3. Dean Mitchel L. Winick:

A. Suggests that proposed Rule 4.105(K) be amended to include all the degrees mentioned in proposed Guideline 11.1.

B. Believes proposed Rule 4.164 does not provide adequate notice of the process to be used in Committee consideration of proposed major changes.

C. Believes that the phrase “or otherwise” at the end of proposed Rule 4.165(E) should be deleted or further defined.

See amended rule for proposed change.

D. Is concerned about the mileage change in proposed Rule 4.165(K)(changing fifty-five miles to ten miles).

See amended rule for proposed change.

E. Objects to deleting the requirement that the proposed *Guidelines for Accredited Law School Rules* be subject to a reasonable comment period and after consideration of any comments received before being changed.

See amended rules for proposed change.

4. Dean Joe Moless:

A. Believes the phrase “has complied with Accredited Law School Rules and” should be deleted from the definition of “California accredited law school” in proposed Rule 4.105(C).

See amended rules for proposed changes.

B. Appears to desire more information about how the hourly rate for Senior Executive or consultant services is determined. See proposed Rule 4.110(B).

C. Believes that if proposed Rule 4.160(D) imposes an obligation on adjunct faculty to devote adequate time to administration, instruction, and student counseling, it is unrealistic and unreasonable.

D. Objects to the phrase “as soon as possible” in proposed Rule 4.160(F) regarding the obligation of law schools to disqualify students for lack of scholastic performance. Believes the phrase is vague and subject to ad hoc administrative determinations.

E. Believes the requirement in proposed Rule 4.161 that law schools report their noncompliance with the rules in their annual compliance reports is inappropriate. As many of the rules are ambiguous, law schools will be unable to determine their compliance or noncompliance.

See amended rule for proposed change.

F. Believes reasonable cause should exist in connection with the Committee requiring a law school to submit a self-study that does not involve a periodic visit.

G. Recommends that a rule be added to allow law schools to petition the Committee with concerns that changes to the guidelines contravene the rules. A further appeal of Committee determinations should be allowed to the Board of Governors in certain circumstances.

H. Recommends that all rule and guideline changes be supported by studies on their impact on achieving a diverse bar membership and hearings following public comment on the changes and studies.

I. Believes the proposed new *Accredited Law School Rules and Guidelines for Accredited Law School Rules* are inappropriately being fast tracked.

J. Questions why the *Rules Regulating Accreditation of Law Schools in California* and the *Factors and Comments Governing the Interpretation and Application of the Standards* are being changed at all.

5. CALS Deans and 6. Former State Bar President P. Terry Anderlini:

A. A provision should be inserted in proposed Rule 4.103 that says "The Committee may adopt amendments to the Guidelines after having given reasonable public notice of the proposed amendments and after having given fair consideration to the comments received. All other guidelines, comments or interpretations will be considered recommendations."

See amended rules for proposed change.

B. Proposed Rule 4.165(F) (which states that programs or classes for credit that are to be held more than ten miles for a law school must be approved by the Committee under the major change process) should be amended to return the mileage parameter to what it is under the current *Factors* (more than 55 miles).

See amended rules for proposed change.

7. Grace L. Suarez:

Suggests that the specific library requirements (which are not specified in the Accreditation Rules) should be able to be fulfilled through electronic access rather than paper documents, i.e., books.

Modifications to Original Proposed Accreditation Rules

A number of the foregoing comments do not suggest specific deletions or additions. The following proposed changes address many of the commentators' specific suggestions and are intended to clarify the rules. Many of the comments raise policy issues beyond the scope of what is contained in the current Accreditation Rules or the proposed new rules.

1. Rule 4.103: Add as second sentence: "The Committee has the authority to amend the guidelines, subject to a reasonable comment period and after consideration of any comments received."
2. Rule 4.105(C): "A "California accredited law school" is a law school that has ~~complied with the Accredited Law School Rules and~~ has been accredited by the Committee."
3. Rule 4.105(L): A "California registered unaccredited law school" is an unaccredited California law school that ~~meets the requirements of the Unaccredited Law School Rules and~~ that has been registered by the Committee.
4. Rule 4.105(N): "An "unaccredited fixed-facility law school" is an unaccredited law school that conducts its instruction principally in physical classroom facilities. An unaccredited fixed-facility law school must require classroom attendance of its students for a minimum of 270 hours a year for four years."
5. Rule 4.160(D): "Dean and Faculty. The law school must have a competent dean ~~or other administrative head~~ and a competent faculty that devotes adequate time to administration, instruction, and student counseling."
6. Rule 4.160(F): "Scholastic Standards. The law school must maintain sound scholastic standards and must as soon as possible identify and disqualify those students who ~~have demonstrated they are not qualified to continue~~ lack the capability to satisfactorily complete the law school's J.D. degree program.
7. Rule 4.160(H): Multiple locations. ~~If a law school has multiple locations that are more than ten miles apart by the most direct vehicular route, each location of the law school is considered a separate law school that must comply with the requirements of these rules. Accreditation is granted to a law school as an institution. If a law school receives approval to open a branch campus, the branch campus must be operated in compliance with the Standards, except that the Committee may determine whether, and if so, to what extent, the Library Standard shall apply. If a law school conducts individual seminars or classes other than at its principal facility or branch campuses, the seminars and classes must be conducted in compliance with the Standards, except the Library Standard.~~

8. Rule 4.160(L): "~~Records and Reports~~. The law school must maintain adequate records of its programs and operations."

9. Rule 4.161:

Annual Compliance Report

A law school subject to these rules must submit an Annual Compliance Report using the form prescribed by the Committee. ~~The report must acknowledge any noncompliance with these rules and describe the remedial steps being taken to address the noncompliance.~~ The deadline and fee for submission of the report are set forth in the Schedule of Charges and Deadlines.

10. Rule 4.165(E): [The following are major changes:] ~~offering a new program in law study, whether a non-degree or non-professional degree program, a degree program beyond the first professional degree in law, or otherwise offering any new program in law study, whether a degree program, non-professional degree program, or non-degree program.~~

11. Rule 4.165(F): [The following are major changes:] sponsoring or offering for law study credit any program seminar or class that will meet more than ten miles from the law school, outside of California, or in multiple locations, other than from a branch campus, that will meet more than fifty-five miles from the law school's principal facility or outside of California.

EFFECTIVE DATE OF PROPOSAL

The new rules would become effective January 1, 2009.

FISCAL AND PERSONNEL IMPACT

None

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

RULE AMENDMENTS

Title 4. Admissions and Educational Standards; Division 2. Accreditation Rules will replace the *Rules Regulating Accreditation of Law Schools in California*.

PROPOSED BOARD COMMITTEE/BOARD RESOLUTIONS

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

RESOLVED, following publication for a public comment period and consideration of the comments received, and upon recommendation of the Committee of Bar Examiners, that the Board Committee on Regulation, Admissions and Discipline recommends that the Board of Governors of The State Bar of California approve the proposed Title 4. Admissions and Educational Standards; Division 2. Accreditation Rules, which will replace the *Rules Regulating Accreditation of Law Schools in California*, in the form attached, to be effective January 1, 2009.

PROPOSED BOARD RESOLUTION

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

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline, that the Board of Governors of The State Bar of California hereby approves the proposed Title 4. Admissions and Educational Standards; Division 2. Accreditation Rules, which will replace the *Rules Regulating Accreditation of Law Schools in California*, in the form attached to these minutes and made a part hereof, to be effective January 1, 2009.