

COMMENTS re PROPOSED RULES APRIL 2008

By

Dean L. Patrick Piggott
Humphreys College
Laurence Drivon School of Law

Chapter 4, Rule 4.160 (H) Multiple Locations.

The Rule does not define "Multiple Locations". We presently have CBE approval to teach occasional Law classes on the Modesto campus of our undergraduate program. That location is approximately 29 miles away. As 35% of our students drive from Modesto the few classes save them money and time and are quite successful. The cost to title this activity as a separate Law program would be prohibitive.

I believe the rule should apply only to the situation where the school is teaching a majority of classes in two locations. Our situation is covered as a "major change" and the CBE gave us approval to teach two classes per quarter (out of our usual 11 or 12 classes). Additionally if any class is taught in Modesto it must next be offered in Stockton.

The Rule might be modified to add the sentence: "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 Rule 4.165 (F)

This would allow for the occasional MCLE course offerings and special event classes such as Trial Preparation at a Court House as well as cover Humphreys College's situation.

Additionally, I actually believe 10 miles is too short a distance in the metropolitan areas where the school may want to offer a class to take advantage of a particular location. 20 miles would seem more appropriate.

Rule 4.105 Definitions (N)

Although (N) has an introductory paragraph defining unaccredited law schools, subparagraph (3) says “A fixed-facility law school *must* (emphasis added) require attendance of its students for a minimum of 270 hours a year for four years.” It could be read to apply to all schools.

The new proposed Factors discuss completing law studies within 7 years. One would presume that means a student could elect a more part-time approach. Is this 270 hours rule meant to apply only to the situation where a student wishes to take the Bar without a JD? It needs to be clarified as most JD programs do not require that amount of hours every year but may allow breaks and returns and a slower pace. The majority of our students are full time employees and many have obligations mandating a slower pace.

This year I allowed an Accountant to drop one class during his heavy tax season. Without that class he will not complete 270 hours. We made it clear to him the consequences but we do not feel obligated to compel 270 hours a year with a four year closure.

Could the Rule state *must* require those hours unless the student is fully informed he or she cannot therefore become eligible for the Bar unless they complete a JD.

Rule 4.160 (G)

This Rule says the law 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. The proposed Guidelines are not specific either but do require the LSAT which may or may not provide guidance.

If a Rule is a mandated requirement there must be some guidelines. Who says who is “obviously unqualified”? What are the criteria? As opportunity schools do we not admit prospects with less background because they never had the opportunity to gain that background? Will we be hamstrung by ABA criteria? Must our team players be NBA qualifiers? The Committee needs to decide how they see our roll.

It is frightening to some of our Deans that some agent of the CBE will say we admitted “unqualified” students without some process to set the standard and to have an appeal based on data when the agent says we have violated the Rules.

I call for a study of the issue and to change the word in the Rule to “*should not*”.



MONTEREY COLLEGE OF LAW

100 Col. Durham Street
Seaside, CA 93955

Mitchel L. Winick
Dean and Professor of Law
831-582-4000
mwinick@montereylaw.edu

April 21, 2008

George Riemer
Director for Educational Standards
Office of Admissions
State Bar of California

Dear Mr. Riemer,

Please accept the following comments related to the proposed changes of the Accredited Law School Rules.

Rule 4.105 (K)

Comment: The proposed *Guidelines for Accredited Law School Rules*, Section 11.1 address additional professional law degrees such as “Executive Juris Doctor,” “Life-time Learning Juris Doctor.” These degrees should be added to the definitions of Rule 4.105(K).

Rule 4.164 Prior approval of major changes

Comment: This rule addresses the notification process for obtaining approval of a major change. However, the rules do not define the process that the Committee will take in consideration of the request, including; a) whether a hearing before the Committee is allowed, b) the schedule or timetable for a response, c) the process for amending an initial request, d) the process for appealing a decision, and e) the process for re-submitting a modified request. The modified rules should include clear definitions of these processes.

4.165 (E) Major Changes

Comment: The addition of the terms “or otherwise” at the end of this rule is overly broad and undefined. It should be removed or additional types of programs should be specified.

4.165 (F) Major Changes

Comment: There is no commentary provided by the Committee supporting the need to change the current rule that requires approval to offer a program or class that will meet more than 55 miles from the law school. The proposed rules arbitrarily changes the distance to 10 miles. As an example of the impact of this rule change, Monterey College of Law would need to submit a major change request (and pay a substantial fee) every time that it intended to offer a clinical program or a practice skills

class in three of the four local courthouses that serve our community. Absent a compelling reason, this rule should not be modified.

Finally, Monterey College of Law strongly objects to the change that no longer requires that proposed changes to the "Guidelines" be subject to reasonable public notice and fair consideration of comments received. Considering the importance of these Rules and the interpretive Guidelines, any substantive changes and respective comments by interested parties should be granted more consideration than being redefined as "recommendations only."

On behalf of Monterey College of Law, I appreciate serious and careful consideration of these comments and request that the recommended changes be adopted prior to submitting the proposed rules to the Committee for adoption.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitchel L. Winick". The signature is fluid and cursive, written over a horizontal line.

Mitchel L. Winick
Dean and Professor of Law
Monterey College of Law

LINCOLN
LAW SCHOOL
OF SAN JOSE

A Public Benefit Corporation

April 24, 2008

Ms. Saida Salfiti
Office of Admissions
The Committee of Bar Examiners
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Revisions to the *Rules Governing the Accreditation of Law Schools in California*

Dear Ms. Salfiti,

Although a separate letter will be forthcoming from CALS, I transmit this personal letter to address items in the proposed Rules. Due to the constraints of time, I have been unable to raise the items with my colleagues. As the items are, however, of serious importance, this letter is sent to preserve the record.

Rule 4.105 Definitions (C). The phrase attendant to the definition of a “California accredited law school” reads in pertinent part, as follows: “that has complied with the Accredited Law Schools Rules and....” The preceding definition of an ABA approved school has no such addition. The principle of *mutatis mutandis* should be applied. The introduction of the phrase suggests some automatic consequence to non-compliance. This weighs against both the notion of waiver and the process contemplated for loss of accreditation. The phrase is ambiguous and is unnecessary.

Rule 4.110 Fees (B). The provision interjects the notion of “cost.” Frankly I do not know what the Senior Executive is paid and there appears to be no ready means to ascertain that figure. One is unable to compute what a fair cost would be without this reference point.

Rule 4.160 Standards (D). The paragraph is, in part, ambiguous in that the phrase “that devotes adequate time to administration, instruction and student counseling” could be construed to impose that burden upon faculty rather than dean or deans who perform administrative and counseling functions. If that is the intent it represents a failure to understand the nature of adjunct faculty who form either the core or the exclusive component of instruction in California –accredited law schools and to pose a burden

Appendix A

inconsistent therewith. If the Committee and Board desire more faculty governance that should be explicitly declared so that it may be the subject of full and informed discussion.

Rule 4.160 Standards (F). The phrase as "soon as possible" is dependent on so many extraneous factors that it creates a vague and subjective standard subject to ad hoc administrative interpretation. At a minimum, there should be an inherent referential standard or the phrase should be eliminated from the rule. These are important matters in a community such as ours in California. My faculty has debated for decades the appropriate length of the evaluative process. The debate has been sincere and involved honestly, accuracy, serious social concerns, educational philosophy, civil rights and discrimination. These are grave matters in our community where good-faith and diversity occupy a critical role. To issue the mandate ambiguously is to allow for unguided discretion without identifiable benchmarks.

Rule 4.161 Annual Report Compliance. To the extent the Rules are themselves ambiguous, what constitutes compliance is uncertain. One would assume that any such violation would be addressed by a request for waiver with the consequences as the Rules provide.

Rule 4.163 Self-study. A request for "more frequent" reevaluation or self-study should be grounded in some determination or fettered by some standard, whether a rule of "reasonably required" or something similar such as if good cause is found to invite a re-evaluation.

Suggested additions to the Rules:

Rule 4.178 Review of Guidelines for Consistency with the Rules: In the event any School Petitions the Committee contending that a proposed change in the Guidelines materially contravene a Rule, the Committee will review the Guideline for consistency with the Rule. If the Committee denies the Petition, the same may be appealed to the Board of Governors provided at least 3 members of the Committee have in any combination have abstained or voted in favor of the Petition.

Rule 4.179 Diversity Impact Study: When making any change in these Rules or the Guidelines promulgated under them, staff shall provide in advance to the Committee a reasonably comprehensive study available to the general public prior to hearing on the proposed change that indicates the probable impact the change would have on the goal of achieving a diverse membership in the State Bar of California.

I have a general concern relating to the "fast tracking" of this matter and the "Guidelines." Identical concern has been expressed by every dean of a CALS accredited law schools I have surveyed. Various rationales seemed to have been proffered by staff:

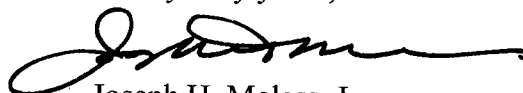
Ms. Saida Salfiti
April 24, 2008
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the New College crisis; the Dunn legislation; the suggestion that the changes have been in “the air” for years. Yet the exact nature of the New College problem was in the San Francisco newspapers for months and a “Google Alert” placing the full names of the CALS in quotes will give access to hourly news stories about any of them. The Dunn legislation by its plain text addresses the problem of unaccredited schools and consumer protection in respect to their programs as problems requiring immediate attention. One would assume that would require the time-consuming attention of staff. Instead, it has become a spring board to review and re-write the Rules and Guidelines governing accredited schools. In doing so the emphasis has been placed much less on legal education in theory and fact. In focusing on the quality of education it’s the teaching that counts and is the most important component of the student/teacher duality. We are especially charged as California lawyers in “the nation of California” to address the pressing issues of diversity. Our schools recognize that education is an intrinsic virtue requiring none other to justify it; that a legal education empowers the student and betters our community; and that in minting law-trained individuals and attorneys we are discharging a sacred societal function.

It has been occasionally repeated that some of the language in the Rules emanate from the older Rules. Unfortunately not having been “present at the creation” my words are but a few hopefully helpful suggestions that would have been made had I been so present. In any case replication is never assurance of validity.

This letter is not intended to challenge the bona fides of the staff. However, in matters involving any bureaucracy where governing bodies are transitory the imposition of principles of clarity is simply the nominal price for assuring everyone in the process understands the ground rules and lessens the potential for perceived capriciousness while enhancing the rule of reason.

Very truly yours,



Joseph H. Moless, Jr
Dean and Professor of Law
Lincoln Law School of San Jose

Copies

George Riemer, Esq.
Gayle Murphy, Senior Executive
Dean Barbieri, Esq.

THE CALIFORNIA ACCREDITED LAW SCHOOL DEANS'
RECOMMENDED CHANGES TO THE
PROPOSED REVISIONS OF THE RULES GOVERNING
THE ACCREDITATION OF LAW SCHOOLS IN CALIFORNIA

Along with the general public, the California Accredited Law School Deans, (CALS Deans), received copies of the proposed revisions of the Rules Governing the Accreditation of Law School in California. In this period of public comment, the CALS Deans' jointly present two significant changes to the proposed new Rules. The first change is for retention of the notice and public comment requirement for any changes or amendments to the Guidelines. The second change is to reinstate the 55 mile course/class distance limit as the trigger for a "major change" petition.

- I. **Retention of Reasonable Notice and Public Comment.** The new Rules intended to govern the accredited law schools omit the requirement for reasonable notice and public comment when the Committee alters or amends the Guidelines, which are the substantive directives interpreting the standards outlined in the Rules.

Recommendation: Rule 4.103 Interpreting and applying the rules. The Guidelines for Accredited Law School Rules, as adopted by the Committee of Bar Examiners, govern the interpretation and application of these rules. *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 only.*

Discussion:

Current Rule: RULE ONE: GENERAL PROVISIONS. Section 1.01. Name and Scope of Rules.These Rules may be amended from time to time by the Committee, subject to the approval of the Board of Governors, and the amendments shall become effective upon approval by the Board of Governors. In addition, *the Committee will publish interpretive comments and factors governing the interpretation and application of the Standards, and shall have the authority to alter or amend the comments and factors after having given reasonable public notice of proposed amendments and after having considered all comments received about the proposed amendments to the comments and factors.*

Proposed: Rule 4.101. What these rules are (B) The rules have been approved by the Committee and adopted by the Board of Governors as part of the Rules of the State Bar of California and may be amended in accordance with those rules.

Proposed: Rule 4.103 Interpreting and applying the rules. The Guidelines for Accredited Law School Rules, as adopted by the Committee of Bar Examiners, govern the interpretation and application of these rules.

CALS DEANS' RECOMMENDED CHANGES TO THE
PROPOSED RULES GOVERNING ACCREDITED LAW SCHOOLS

Effect: The Rules Governing the Accreditation of Law Schools in California provide the framework for the regulation of the accredited law schools. The Guidelines, formerly called Factors, add requirements to each of the Rules in substantial and significant detail.

Under proposed Rule 4.103, new Guidelines can be promulgated without the requirement of reasonable notice and public comment. The content of future guidelines is substantive and material. Therefore, reasonable notice and the opportunity for public comment should be retained. There is no detriment to allowing the accredited law schools both notice and an opportunity to comment when the substantive application of the Rules is to be changed or "re-interpreted". It is very difficult to imagine a situation where a guideline would need to be changed without there also being sufficient time for notice and public comment.

Notice and due process is so fundamental in this situation that it needs to be stated in the Rule, rather than being considered an unwritten understanding, or worse, bypassed all together.

- II. Restriction of Course/Class sites.** Under the proposed rule, it is now a major change to hold a course or even a single class, more than ten miles from the law school. The proposed restriction to 10 miles, rather than the current 55 miles, is unduly burdensome and unnecessary. The major change process is cumbersome and expensive and should be confined to items that are major - not a class or course held at a reasonable distance off-premises. The Rule should not be altered to micro-manage classes to this extent.

Recommendation: Rule 4.165 Major Changes. The following are major changes: (F) sponsoring or offering for law study credit any program that will meet more than 55 miles from the law school, or outside of California.

Discussion:

Current: Rule 6.03 Major Changes. The following are major changes: (F) sponsoring or offering for law study credit any program or class that will meet more than 55 miles from site of the law school, outside the state where the law school is situated, or in multiple locations;

Proposed Rule 4.165 Major Changes. The following are major changes: (F) sponsoring or offering for law study credit any program or class that will meet more than ten miles from the law school, outside of California, or in multiple locations.

CALS DEANS' RECOMMENDED CHANGES TO THE
PROPOSED RULES GOVERNING ACCREDITED LAW SCHOOLS

Effect: The major change process is cumbersome, lengthy and expensive. It should be restricted to something major – such as activities that substantially affect the law school's program - not used as a prohibition against a class or two designed to benefit students.

Ours is a mobile society. Students travel many miles to attend classes. Others go to school near where they work and then travel home. The majority of students at accredited law schools are part-time evening students, not full time students who spend their days on a single campus. The new rule unnecessarily hampers accredited law schools from offering quality courses and classes in locations that will best benefit its students. Ten miles is an arbitrary and unduly restrictive limitation. A recent illustration may be helpful. One accredited law school offered a demonstrative evidence elective in a local courtroom, conducted by a former DA from that county. The courthouse was more than 10 miles from the school situs. Under the new Rules, this very valuable and extremely well received class would be banned unless a "major change" was obtained.

Clearly, this Rule was intended to prohibit the future establishment of multiple campuses without going through the major change process. In that regard, there is no disagreement. . Law schools need to have the flexibility to address the needs of their student populations in the most educationally sensible and beneficial manner possible. However, law schools which make academically sound and economically prudent course decisions should not be penalized by a very narrow restriction on common sense alternatives. There has been no showing of any need to restrict classes offered to less than 55 miles from the school situs in those cases where a separate program is not being established.

Respectfully submitted on April 24th, 2008 by all of the California Accredited Law School Deans:

Dean Sandra Brooks Cal Northern School of Law	Dean Patrick Broderick Empire College School of Law
Dean Darrin Greitzer Glendale University College of Law	Dean Patrick Piggott Humphreys College Laurence Drivon School of Law
Dean Geoffrey Brown John F. Kennedy School of Law	Dean Anthony Dicce Lincoln Law School of Sacramento

**CALS DEANS' RECOMMENDED CHANGES TO THE
PROPOSED RULES GOVERNING ACCREDITED LAW SCHOOLS**

Dean Joseph Moless Lincoln Law School of San Jose	Dean Mitch Winnick Monterey College School of Law
Dean Jane Gamp San Francisco Law School	Dean Jan Pearson San Joaquin College of Law
Dean Heather Georgakis Santa Barbara College of Law Ventura College of Law	Dean Stan Pulle Southern California Institute of Law Santa Barbara and Ventura Campuses
Dean Donald McConnell Trinity Law School	Dean George Dezes University of West Los Angeles School of Law San Fernando Valley Campus West Los Angeles Campus

Addressees:

**Saida Salfiti
Committee of Bar Examiners
Office of Admissions
State Bar of California
180 Howard Street
San Francisco, CA 94105**

**Gayle Murphy
Senior Executive for Admissions
Office of Admissions**

**George Riemer
Director for Educational Standards
Office of Admissions**

**Dean Barbieri
Director for Examinations
Office of Admissions**

ANDERLINI, FINKELSTEIN, EMERICK & SMOOT

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

400 SOUTH EL CAMINO REAL

SUITE 700

SAN MATEO, CALIFORNIA 94402

TELEPHONE (650) 348-0102

TELECOPIER (650) 348-0962

INFO@AFESLAW.COM
WWW.AFESLAW.COM

OF COUNSEL

DANIEL J. MONACO

(1922-2007)

ROBERT M. DESKY

THOMAS J. BARGER

BRUCE M. LUBARSKY

PATRICK MCGOVERN

LEGAL ASSISTANT

G. CHRIS ANDERSEN

† P. TERRY ANDERLINI
* DAVID G. FINKELSTEIN
** MERRILL G. EMERICK
PAUL J. SMOOT
ALEXANDRIA N. NGUYEN

† PAST PRESIDENT STATE BAR
* ALSO ADMITTED IN NEW YORK
** ALSO ADMITTED IN OREGON

April 24, 2008

HAND DELIVERED

Board of Governors
Committee of Bar Examiners, Office of Admissions
State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Members of the Board of Governors and the Committee of Bar Examiners,

As a former President of the State Bar of California, I have serious concerns about two of the changes in the Proposed Rules Governing Accreditation of Law Schools in California. The first change is the removal of the notice and public comment requirement when the guidelines are changed. The second change is the restriction of classes/courses to within ten miles of a law school building, unless a major change petition is sought and approved.

The right to notice and public comment is central to the State Bar regulating function. The Guidelines are the substantive directives construing the more general Rules governing unaccredited law schools. Since the guidelines are not merely procedural, due process notice and public comment must not be rescinded or restricted without significant and persuasive reasons – which have not been shown.

If notice and public comment are considered implicit in the Rules, or were omitted inadvertently, these flaws can be easily remedied by restoring the intent of the present Rule by adding to the following words to proposed Rule 4.103: 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 only.

Secondly, the majority of California accredited law schools deal with commuting students. Almost all are part-time students who struggle with full time work in addition to their legal

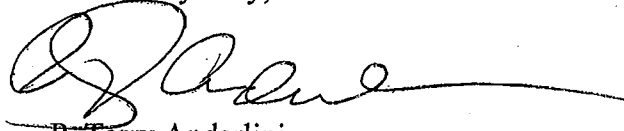
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studies. Accredited law schools are consistently seeking to provide beneficial academic courses and classes. Thus, it is unduly harsh and restrictive to reducing where a class/course can be offered from the current 55 miles to the proposed 10 mile limit. Major change procedures should be restricted to be law school actions that result in major changes in the law school program, not minor course or class decisions. Our accredited law schools should be allowed the latitude to provide quality programs in a reasonable manner consistent their administrations" informed decisions on how best to meet their student's needs in an academically sound manner.

Thank you for your thoughtful consideration of these items.

Yours very truly,

A handwritten signature in cursive script, appearing to read "P. Terry Anderlini", written in black ink.

P. Terry Anderlini

PTA:jfj

FYI....

-----Original Message-----

From: Grace Suarez [mailto:gracels@sbcglobal.net]

Sent: Monday, June 02, 2008 1:25 PM

To: ADMSF

Subject: Comment on Proposed Revisions Governing the Accreditation of Law Schools in California

Please forgive the lateness of this comment, but I was not aware of the deadline previously.

I wish to comment on Rule 4.160(i):

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

My understanding is that the minimum requirements currently set by the Committee require that many of the library resources be maintained in the form of paper documents, i.e., books.

I believe that this is an old-fashioned requirement that is out of step with the realities of modern law practice, fails to prepare law students for practicing in the real world, and imposes a financial burden on law schools, forcing them to waste money that could be much better spent on computers and other tools better suited to the 21st

century.

Please let me know if my comments about libraries might be better communicated to another person or entity. Thanking you for your kind attention, I am,

Yours truly

Grace L. Suarez

SBN 067736

508 Liberty St.

San Francisco CA 94114

888.825.8748

gracels@electric-law.com