Wong, Kim

From: Patrick Piggott [patrick.piggott@humphreys.edu]
Sent: Wednesday, February 02, 2011 1:29 PM
To: Wong, Kim
Subject: Comments re change in FYBX rules

To the CBE:

The proposed changes are not helpful to our CBE law schools at all.

FIRST: There is an assumption in the rules that all law schools teach the same subjects and they do not. The FYBX gives credit for Torts, Contracts and Criminal law whether the student has taken the class or not. That has happened at our campus. Your office determined the student became eligible because they had studied "one year" and we were told you did not care if they had not taken contracts.

The rules should state that a student becomes eligible upon completion of the three listed classes. You could also add that those three classes must be completed within 2 years.

We do want to provide more study time to weaker students and taking classes two nights a week instead of three has always been one of our tools to help these students. The remaining night can then be tutoring and counseling.

It is wrong to make them take a full load. They must, of course, be notified of the risk that they may not receive credit.

SECOND: The Bar continues, wisely so, to encourage diversity. Many of us consider ourselves opportunity schools and do not limit entrance to only high LSAT achievers. That approach has not led to more diversity. As example, I have four present students who emigrated to America from India, two from Nigeria and two from Russian. I am convinced language and cultural affects created problems for them with the LSAT, They are all now top students. We use the FYBX as a requirement unless they achieve a certain GPA.

On the one hand CBE criticizes us for accepting lower LSATs and now they want to take away a tool that we consider an excellent alternative and gauge.

MY SUGGESTION:

Why have an exam that tests three subjects unless the student has taken all three?

Why not allow a slower pace of study for those who need the extra help? Is speed of learning the criteria for a good lawyer?

There are two excellent reasons for the FYBX. One is the assessment of unaccredited legal education. The second is the assessment of individual students by an accredited school

Any accredited law school may require a student to take the FYBX upon completion of the three tested subjects.

If the problem is cost then charge an additional fee to the schools who "elect" but are not required to have students take the LSAT.

ATTACHMENT D

Submitted by:

PATRICK PIGGOTT
Dean of Law
Humphreys College
Lawrence Drivon School of Law

Wong, Kim

From: Mitch Winick [mwinick@montereylaw.edu]
Sent: Monday, February 07, 2011 3:43 PM
To: Wong, Kim
Cc: Mitch Winick; Jane Gamp; Darrin Greitzer; Dean Barbieri; George Dezes; Heather Georgakas; Janice Pearson; Joseph Moless; Myron Steeves; Patrick Piggott; Sandra Brooks; Stanislaus Pulle; William A. (Terry) Robertson; William Lewis
Subject: Request that the Amendments to the Admission Rules be withdrawn

Dear Ms. Wong,

In the summary to the request for public comment regarding proposed amendments to the Admission Rules it is stated as follows: *"several additional amendments are needed to ensure clarity regarding the intention of the rules and to accurately reflect current policies, procedures and needs.* ***None of the proposed amendments are substantive.****"* (emphasis added).

If this summary represents the presentation made to the Committee of Bar Examiners and the Board Committee on Regulation, Admissions and Discipline, it is factually incorrect and misleading as to the intent and effect of the proposed amendments. I call to your attention several proposed amendments in particular.

4.71 (C) The Committee may establish guidelines for the processing of conduct violations, which may include delegating certain decisions to the Senior Executive so that the Senior Executive may take action on the Committee's behalf. The Committee may establish specific sanctions for certain conduct where the conduct is undisputed, such as bringing an unauthorized item into the examination room, which will not entitle an applicant to request an administrative hearing.

The language above that is proposed for addition to Rule 4.71 appears to delegate the Committee of Bar Examiner's authority in certain disciplinary matters to a non-lawyer, the staff Senior Executive. It furthermore removes an applicant's previous right to an administrative hearing.

These are clearly **substantive** amendments that substantially modify an applicant's due process rights.

4.73 (A) has the following language added . . . The applicant may attend the administrative hearing with counsel; make a written or oral statement; and present documentary evidence. **Applicant's counsel is limited to observation and may not participate.** (emphasis added)

and 4.73 (B) has the following proposed deletions: ~~(B) The **applicant may be represented by counsel during the hearing**. An attorney~~ A staff member from the State Bar ~~Office of General Counsel represents~~ will present the matter on behalf of the Committee. ~~A different attorney from this office represents the panel.~~ (emphasis added)

The affect of the proposed changes to 4.73 (A) and (B) is three-fold: 1) it removes the applicant's right to be represented by counsel; 2) it changes the nature of applicant's attorney to a mute observer, vs. an advocate available to protect the rights of the applicant; and 3) it removes the obligation of the Committee and the right of the applicant to have the Committee represented by an attorney from the State Bar Office of General Council. This last amendment allows the "prosecutorial" role of the Committee in the disciplinary process to be delegated to a non-attorney "staff member", with no statement as to any required qualifications related to the staff member's knowledge or understanding of fundamental legal rights such as evidence or due process in a disciplinary hearing. It is highly questionable why the State Bar of California, the sole authority for the licensing and regulation of attorneys, is recommending modifications to its disciplinary process that remove the role of attorneys from the process.

These are clearly **substantive** amendments that substantially modify an applicant's due process rights.

Therefore, the representation to the public that "None of the proposed amendments are substantive" is a misleading and inaccurate statement. I believe that the proposed amendments present **substantive changes** that require a more thorough review. I respectfully request that the proposed amendments to the Admissions Rules be withdrawn and resubmitted to the Committee of Bar Examiners for additional review and reconsideration.

I further point out that the process for the initial review of these amendments did not provide a reasonable opportunity or notice for the public to hear the reasoning for the proposed amendments. The only notice that these changes were being

proposed was the following agenda item on the December 4, 2010 Committee of Bar Examiners Subcommittee on Operations and Management:

5. Proposed Amendments to the *Admissions Rules* – Request to Board Committee on Regulation, Admissions and Discipline to Circulate for Public Comment. Attachment "O-304." **(Action)**

A request by the California Accredited Law School's representative Dean Jane Gamp for all non-confidential attachments was returned with a blank page in place of Attachment 0-304 that said "item will be forwarded". However, the item was not forwarded prior to the subcommittee meeting or disseminated after the meeting. Although the above agenda posting may meet the barest minimum of public notice, it certainly fails as a good faith effort to an open and public process. It resulted in the dialogue related to the substantive changes effectively being conducted out of the public view and copies of the proposed amendments apparently being limited to subcommittee members attending the meeting.

For all of the above stated reasons, I respectfully request that the proposed amendments to the Admission Rules be withdrawn from consideration and resubmitted to the Committee of Bar Examiners for a public hearing, review, and reconsideration.

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Oak Brook College of Law

Pro Deo et Patria

March 8, 2011

Kim Wong
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Changes to Rule 4.3

Dear Ms. Wong:

In response to the request for comments concerning the proposed changes in the Admissions Rules, we would like to address the proposed Rule 4.3(P) and its relationship to the current Rule 4.28.

The proposed changes add an additional definition to Rule 4.3 in an effort to define the word "year" for purposes of calculating law study credit. I understand the intent behind this proposed change is to prevent someone from beginning a year of study prior to less than 365 days after a student began a previous year of study. However, this proposed change creates a conflict between the meaning of "year" in Rule 4.3 and the meaning of "year" in Rule 4.28(A). Rule 4.28(A) defines "one year of study" as being not less than 48 weeks and not more than 52 weeks, but the proposed Rule 4.3(P) defines a "year" as not less than 365 days.

The proposed 4.3(P) is "for purposes of calculating law study credit toward meeting the legal education requirements ...." The language of Rule 4.28(A) states "to receive credit for one year of study by correspondence...." The 48-52 weeks parameter for a year of legal study under Rule 4.28(A) is necessarily a part of a "year" for "calculating law study credit" under the proposed Rule 4.3(P). Therefore, there are conflicting definitions/applications of the word "year."

To eliminate the conflict, I suggest that Rule 4.3(P) not be added, and that a new subpart (C) be added to Rule 4.28 as follows:

> (C) A new year of legal study by correspondence or distance learning may not begin prior to 365 days from the commencement date of a previous year of study.
>
> Alternative language is as follows:
>
> (C) The commencement date of a new year of legal study by correspondence or distance learning may not be prior to the same calendar date as the commencement date of a previous year of study.

This addition to Rule 4.28 would accomplish the goal desired by the proposed Rule 4.3(P), but it eliminates the confusing and conflicting language between the two sections. It also ensures that the "at least four years" of legal study required under Rule 4.26(B)(1) will be at least four calendar years of 365 days.

Thank you for seriously considering these comments.

Sincerely,

Robert J. Barth
Associate Dean

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