

AGENDA ITEM

DATE: July 2, 2012

TO: Members, Regulation, Admissions and Discipline Oversight Committee

FROM: Gayle Murphy, Senior Director for Admissions

SUBJECT: **Proposed Amendment to *Accredited Law School Rules* Re Minimum, Cumulative California Bar Examination Pass Rate for California-Accredited Law Schools – Request to Circulate for Public Comment**

EXECUTIVE SUMMARY

During its June 29, 2012 meeting, the Committee of Bar Examiners (Committee) approved in principle an amendment to the *Accredited Law School Rules* to include a new rule, Rule 4.160(M), to require that California-accredited law schools maintain a minimum, cumulative bar examination pass rate to remain accredited, subject to a period of public comment authorized by the Board Committee on Regulation, Admissions and Discipline Oversight. The public comment period would include one public forum to allow interested persons to provide their comments in person. The Committee seeks the Board Committee on Regulation, Admissions and Discipline's approval to circulate the proposed new rule for public comment. If the Board Committee agrees that the proposed new rule should be circulated for public comment, after the public comment period has concluded, any comments received would be forwarded to the Committee's Advisory Committee on California Accredited Law School Rules for consideration and preparation of its recommendation of a final version of the rule for consideration by the Committee during its October 2012 meeting.

BACKGROUND:

The Committee of Bar Examiners' Advisory Committee on California Accredited Law School Rules, which is composed of three representatives from California-accredited law schools and three Committee of Bar Examiners (Committee) representatives, voted by a majority vote to recommend to the Committee that the *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules* be amended to include a minimum Cumulative Bar Examination Pass Rate (CBEPR) as a new standard for accreditation. The Committee considered the matter during its June 29, 2012 meeting and approved the recommendation in principle, subject to a public comment period that includes a public forum for receiving oral comments.

Attachment A contains the proposed new rule, Rule 4.160(M). Attachment B contains two proposed new guidelines, Guideline 12.1 and Guideline 12.2 that would be used to interpret the new rule.

Under the current rules and regulations, the Board of Trustees approves any amendments to the *Accredited Law School Rules* and the Committee approves any amendments to the *Guidelines for Accredited Law School Rules*, which would occur after a period of public comment and consideration of any comments that have been received. If the Board Committee agrees that the proposed new rule should be circulated for public comment, the proposed new guidelines would be circulated for public comment at the same time.

ISSUE

Whether the proposed new Rule 4.160(M) of the *Accredited Law School Rules* should be circulated for a public comment period.

SUMMARY OF PROPOSAL

The request is to circulate for public comment a proposed new Rule 4.160(M) of the *Accredited Law School Rules*. The proposed new Rule 4.160(M) and the creation of two new guidelines will, for the first time, require that California-accredited law schools (CALS) maintain a specified minimum, cumulative bar examination pass rate (CBEPR). If ultimately adopted, the proposed new rule will replace existing Guideline 6.2(K), which is listed as only one of the criteria for determining whether a law school maintains “a qualitatively and quantitatively sound program of legal education.” Under the current guideline, when evaluating the soundness of a law school’s program of legal education, the Committee would consider “The cumulative success of the law school’s graduates on the California Bar Examination over such period of time as the Committee determines is appropriate” in addition to the ten other criteria.

Since the current rules and guidelines went into effect in 2009, no time period has been established in which to assess the “cumulative success” of the graduates of a CALS on the California Bar Examination (CBX), and no quantitative percentage rate has ever been set to define “cumulative success.” The success rate of a CALS’ graduates on the CBX (or any other bar examination) over a five-year time period will be used to calculate its CBEPR. An individual law school’s CBEPR will then be calculated annually as a rolling, cumulative average based upon the total number of its graduates who take and pass the CBX (or the bar examination of any other state), divided by the total number of its graduates who take the CBX (pass or fail) over the same period of time. Graduates of a CALS who choose not to take the CBX or any bar examination will not be counted in the calculation of a law school’s CBEPR.

As provided by proposed Guideline 12.1, in order to remain compliant and maintain their accreditation in good standing, a CALS will be required to calculate and report a CBEPR at the rate of 50%. If ultimately approved and in order to give each of the CALS sufficient time to meet this standard, the 50% rate not go into effect until fall of 2015. By the fall of 2013 and again in 2014, however, a CALS would be required to report a CBEPR of 45% to remain in compliance with Rule 4.160(M). Before the Committee issues a notice of noncompliance to any CALS that reports a noncompliant CBEPR, however, a request would be made to the law school to provide evidence of its recent

efforts to improve the pass rates of its graduates by means of changes to its admission policies, grading, probation and scholastic standards and academic support program.

The adoption of a CBEPR as a new accreditation standard, along with the decision to set the eventual CBEPR at 50%, has been the subject of considerable discussion and debate between the affected law schools and the Committee. In addition to the discussion among the members of the Committee's Advisory Committee, which included consideration of the comments from several Deans of other CALS who are not members of the Advisory Committee, the Committee met with a majority of the CALS deans last October for the purpose receiving comments relating to the efficacy and utility of establishing a CBEPR as an accreditation standard. Whether there should be a standard as proposed is not universally accepted by the CALS, and while some CALS deans may agree with setting standard they may not agree with the 50% CBEPR.

LENGTH OF PUBLIC COMMENT PERIOD

It is recommended that the public comment period conclude on September 17, 2012, which will provide adequate time for the receipt of comments, to conduct a public forum for the receipt of public comment in connection with the Committee of Bar Examiners' August 2012 meeting, and for the Committee's Advisory Committee to meet and prepare its recommendation.

EFFECTIVE DATE OF PROPOSAL

If the Board of Trustees ultimately approves the amendment to the rule, it is anticipated the rule change would become effective January 1, 2013.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

Rule 4.160(M) of the *Accredited Law School Rules*.

BOARD BOOK IMPACT:

None.

RECOMMENDATION:

The Committee of Bar Examiners recommends that the Board Committee on Regulation, Admissions and Discipline Oversight approve the request that the proposed new Rule 4.160(M), *Accredited Law School Rules*, as attached as Attachment A, be circulated for public comment.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation, Admissions and Discipline Committee authorizes staff to make available for public comment for a period concluding September 17, 2012, the proposed new Rule 4.160(M), *Accredited Law School Rules* in the form attached; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.