

AGENDA ITEM

133 March 2015

DATE: February 20, 2015

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Patricia P. White, Chair, Committee of Bar Examiners
Gayle E. Murphy, Senior Director, Admissions

SUBJECT: Proposed Amendments to Admissions Rules, Statutes and Court Rules re Regulation of Law Schools – Return from Public Comment

EXECUTIVE SUMMARY

Following a period of public comment and consideration of the comments received, the Committee of Bar Examiners (Committee) approved in principle, subject to approval by the Board of Trustees, amendments to the: 1) California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners 2) Business and Professions Code Sections 6046.7 and 6060.7, 3) Article 4. Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fees, 4) State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules, and 5) State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules. Among other changed requirements, the proposed amendments require that unaccredited law schools (renamed “registered law schools”) become accredited within a set period of time and provide the opportunity for online (distance learning) law schools to become accredited. The proposed amendments were circulated for public comment and after consideration of the comments received, the Committee approved the proposed amendments, subject to approval by the Board of Trustees (Board). If approved by the Board, the proposed amendments should next be forwarded to the California Supreme Court for consideration. While the California Supreme Court’s reserved power over the regulation of the practice of law includes its plenary authority over the admission of attorneys and law school regulation, the Legislature shares that authority by adopting measures regarding the practice of law and law school regulation. In order for all the proposed amendments to the Rules of the State Bar to take effect, the Supreme Court must adopt the proposed amendments to the Rule of Court and the Legislature must adopt the proposed amendments to the Business and Professions Code.

BACKGROUND

During its March 2013 meeting, the Committee came to a consensus that various rules and statutes relating to the Committee's oversight of accredited and unaccredited law schools in California should be amended as follows:

- Propose amendments to Sections 6046.7 and 6060.7 of the California Business and Professions Code that will clarify that the Committee's oversight and regulatory authority extend only to law schools and their law-related programs that offer a J.D. degree that would qualify their graduates to take the California Bar Examination; all other law-related programs (offered by law schools or "nonlaw" schools), including advanced law degrees and any other degree in law that is not based on a J.D. curriculum, would be under the oversight of the state's degree granting entity. Propose further statutory amendments that will require all registered, unaccredited law schools to meet the standards for accreditation by the Committee within ten years, which would result in a period of registration with the Committee as an unaccredited law school for no more than ten years.
- Propose amendments to Rule 9.30 of the California Rules of Court that will align the rule with the statutory requirements for admission and the various vehicles of legal education that will qualify an applicant for admission to practice law in California, including new restrictions with regard to how long an unaccredited law school may continue to operate as an unaccredited law school.
- Propose amendments to the *Unaccredited Law School Rules and Guidelines for Unaccredited Law School Rules* that bring them into conformance with the new statutory and court rule proposals, in addition to other changes that may be necessary to ensure that they are not in conflict with the *Admissions Rules* and to enhance the requirements for registration, such as requiring a minimum enrollment of students, providing additional, mandatory disclosures of consumer information including, but not limited to, the public disclosure of any Notice of Noncompliance the Committee has issued the law school over the past five years, the basis for each such Notice and its resolution, etc., in order to ensure public protection and that a sound legal education is being provided by such schools.
- Propose amendments to the *Accredited Law School Rules and Guidelines for Accredited Law School Rules* that will permit the accreditation of distance-learning law schools.

The Committee conducted a public forum in August 2013 to receive input from interested parties on these issues. Subsequently, a Working Group was appointed by the Committee Chair to consider the comments received and to draft proposed rules. The Working Group was composed of a dean from a California-accredited law school, deans from the various categories of unaccredited law schools and members of the Committee.

The Working Group met several times last year and after several very substantive discussions about the issues and possible proposed amendments to the rules and statutes, it made several recommendations to the Committee. The Committee carefully considered the recommendations and approved in principle the proposed amendments, subject to a public comment period and approval by the Board.

After receiving the approval of the Board Committee on Admissions and Education to circulate the proposed amendments for public comment, they were forwarded to the deans of all California law schools and posted on the State Bar's website.

CONCLUSION

Proposed amendments to the: 1) California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners, 2) Business and Professions Code Sections 6046.7 and 6060.7, 3) Article 4. Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fees, 4) State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules, and 5) State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules should be approved by the Board and forwarded to the Supreme Court.

DISCUSSION

Public Comments Received.

Seven comments were received in response to the public comment notice that was distributed to California law schools and posted on the State Bar's website. The following is a summary of the comments received. Copies of the actual comments are available upon request.

1. Mark E. Estes, Law Library Director, Alameda County Law Library
Mr. Estes, while appreciating the intention of several of the proposed amendments, is concerned about the law library requirements. He has seen funding for county law libraries greatly reduced and suggests that an additional source of funding for the county law libraries "...might be to require the law school to make a financial contribution to the county law library in order to truly "ensure access." He notes that students of accredited law schools use the county law libraries as well as their own schools' libraries, and not only have access to the library materials, but also educational activities such as MCLE and legal research courses, as well as volunteer and internship opportunities.
2. Michael P. Clancey, Dean, and Mary Schofield, Academic Dean, Northwestern California University School of Law
The Deans are supportive of the proposal "...to require unaccredited law schools to become accredited and to provide accreditation eligibility to 'Distance Learning

Law Schools.’ Our support is provided with the understanding that the schools presently classified as “Correspondence Law Schools” would be classified together with the schools presently classified as “Distance Learning Law Schools” such that, under new rules, they would both be classified as distance learning law schools and each would have a path to achieve accredited status.” They make several points as to the validity of a distance education and comment “Distance education has moved from the periphery to the main stream. California is clearly on the leading edge of such convention in the field of law.” They also note that the bar examination passing rates for distance learning and correspondence law schools in California “...are comparatively the same as the pass rates for ...(CBE) accredited law schools.”

They summarize by saying: “Distance education law schools are needed in California, especially now when technological advances and non-traditional learning methods can together provide low-cost and effective educational alternative to deserving individuals. Now, more than ever, alternative methods of education in law can and should exist.”

3. Ira Spiro, Spiro Law Corp

Professor Spiro is in his fourth consecutive year as a professor at Peoples College of Law. He urges “...the Bar to treat schools like Peoples [sic] College of Law differently than other types of unaccredited law schools, because schools like Peoples [sic] College of Law serve such an important and under-served purpose for the Bar and our state. *The dominant emphasis of Peoples [sic] College of Law is to train students to become lawyers who represent the under-represented. That is vital to providing access to justice for millions of Californians.*” He supports “...the Bar’s efforts to examine issues concerning unaccredited law schools. Still, essential distinction among schools simply must be borne in mind. If the statutes and rules regarding unaccredited law schools are to be changed, schools like PCL should be treated differently from for-profit schools, schools with high tuitions, and schools that in other important ways are unlike Peoples [sic] College of Law, because PCL performs a rare, possibly unique service to the people of our state.”

4. Kimberly C. Tucker, Director, Sonoma County Public Law Library

She says “...as a law librarian I can attest to the fact that law students absolutely need to know how to use the traditional brick and mortar law library and not solely rely on electronic databases for their research needs. Being completely thorough, requires use of both mediums, I have no doubt, you agree.” She also comments on the reduced funding county law libraries have received and believes that “Some county law libraries are threatened with the reality that they may have to close completely, while others are laying off staff, reducing their collection and hours of operation.” She goes on to say “Should the State Bar make the change in their rules, Law Libraries will be under further demands of their services with no additional funds to support the need.”

5. J. Douglas McElvy, Dean, Oak Brook College of Law
Dean McElvy indicates that Oak Brook College "...is pleased that the proposed rule change would permit accreditation by the California Bar, but there are concerns and questions." He is concerned with the deletion of language related to correspondence law schools and that "This approach would be fundamentally unfair and would be the death knell to many, if not all correspondence schools in California. Under this scenario, unless a current correspondence school became a "distance learning" school, it would be out of business within 5 years." He concludes with "Oak Brook College welcomes the opportunity to be accredited, but it should not be forced to modify the nature of its successful program, unless it chooses to do so. This is not to say that Oak Brook College has no interest in developing more "online" courses, but the timing of that change should not be linked to the requirement for accreditation."
6. Garo Ghazarian, Dean, Peoples College of Law
Dean Ghazarian has been teaching at Peoples College of Law for 20 years. He suggests that the proposed amendments would cause schools like Peoples College of Law to close and urges "...you to keep their ["the many grateful attorneys are graduates of non-accredited law schools...the many nameless souls who but for the opportunities provided by non-accredited law schools, would not become tomorrow's lawyer of our communities] hopes alive and the opportunity to realize their lifelong dreams accessible. You can do all of that and more by keeping the doors of California's non-accredited law schools open."
7. Gregory J. Brandes, Professor and Executive Director, Concord Law School
Generally, in the 13 pages of his comments, Professor Brandes writes in support of the proposed amendments and says "We believe the schools accredited and registered by the State Bar of California, through the Committee of Bar Examiners, are an important part of the future of legal education. These schools may well show others how to provide affordable, accessible, high quality, low cost, practice-readiness for new law graduates." He provides many comments in support of the various rules changes, but, in addition, commented: "The elimination of non-bar-qualify degrees denominated as "J.D." in any fashion is understandable as part of the Committee's desire to prevent consumer confusion. While, as a registered law school offering for many years a high quality, very successful and well-regarded non-bar-qualifying Executive Juris Doctor program, we cannot avidly support this change, we can accept it as part of an overall restructuring that includes the opportunity for all schools to have a path to accreditation." He has suggested some minor editing to various rules, which can be incorporated without changing the substance of the rules.

After review of the public comments received, the Committee did not believe that substantive modifications to the proposed amendments should be made. Essentially, two county law librarians appear to be recommending that the rules continue to require access to hard copy materials. A correspondence law school dean believes that the classification of "correspondence" law school should remain and that "or

correspondence study” be inserted into the proposed language of Section 6060(e)(2)(A), as otherwise, it appears that currently classified correspondence schools will be required to become distance-learning law schools. A fixed-facility law school dean and professor believe that schools should be allowed to remain unaccredited, although they have not given any examples of the requirements that could not be met or how coming into compliance will cost them more to offer their program.

The issue of required access to fixed-facility, hard-copy libraries has been one of many discussions. The consensus of the Committee is that while access to traditional libraries is important and many of the law schools may continue to provide such libraries to their students, it should no longer be an accreditation standard. Some of the concerns of the correspondence law school dean could, perhaps, be addressed through the amendments to the *Accredited Law School Rules* and *Unaccredited Law School Rules* and their interpreting guidelines and how “distance learning” is defined. The issue of continuing to permit unaccredited law schools to retain that status has also been one of continuing discussion, and the Committee believes that all unaccredited law schools should be on an accreditation track.

The following attachments are the same ones that were published for public comment, with one minor revision suggested by Professor Brandes. (In Attachment E, the language: “The time limits are not jurisdictional and the” has been stricken and the words: “and are not binding” have been added to Rule 4.201(B).)

- Attachment A: California Rules of Court – Chapter 3. Legal Education. Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners
- Attachment B: Proposed Amendments to Business and Professions Code Sections 6046.7 and 6060.7
- Attachment C: Article 4. Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fee
- Attachment D: State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules
- Attachment E: State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules

If the Board agrees with the Committee’s recommendations, the proposed amendments would be forwarded to the Supreme Court before any proposed amendments are included in the State Bar’s legislative program. The other rules would be implemented if the proposed amendments to the Rules of Court and the statutes are approved by the Court and related legislation is passed.

If these proposals, ultimately, are approved for implementation, transition rules will be drafted so that those schools currently registered with the Committee are given sufficient time to conform to the new requirements. In addition, if the proposals are accepted, Guidelines interpreting the applicable provisions of the *Accredited Law School Rules* and *Registered Law School Rules* would be drafted, circulated for public comment and adopted by the Committee.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

If the recommendations are ultimately approved, the *Unaccredited Law School Rules* and *Accredited Law School Rules* will need to be updated accordingly.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Board Committee recommend to the Board that the proposed amendments to the: 1) California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by The Committee of Bar Examiners, 2) Business And Professions Code Sections 6046.7 and 6060.7, 3) Article 4. Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fees, 4) State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules and, 5) State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules be approved in the form attached hereto and that staff be directed to pursue adoption of the proposed amendments to the Rule of Court and Business and Professions Code.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that following a period of public comment and consideration of the public comment received, and upon recommendation of the Committee of Bar Examiners, the Board Committee on Admissions and Education hereby recommends the Board approve the proposed amendments to the: 1) California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners, 2) Business and

Professions Code Sections 6046.7 and 6060.7, 3) Article 4. Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fees, 4) State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules, and 5) State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules as attached hereto; and it is

FURTHER RESOLVED, that staff be directed to pursue adoption of the proposed amendments to the Rule of Court and Business and Professions Code.

PROPOSED BOARD RESOLUTION:

Should the Board agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that following a period of public comment and consideration of the public comment received, and upon recommendation of the Board Committee on Admissions and Education, the Board approves the proposed amendments to the: 1) California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners, 2) Business and Professions Code Sections 6046.7 and 6060.7, 3) Article 4 Admission to the Practice of Law, Business and Professions Code Section 6060, Qualifications, Examination and Fees, 4) State Bar Rules, Title 4. Admissions and Educational Standards, Division 2. Accredited Law School Rules and, 5) State Bar Rules, Title 4. Admissions and Educational Standards, Division 3. Registered Law School Rules as attached hereto; and it is

FURTHER RESOLVED, that staff be directed to pursue adoption of the proposed amendments to the Rule of Court and Business and Professions Code.