

AGENDA ITEM

135 NOVEMBER 2016

DATE: November 1, 2016

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

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Amendments to Law School Rules re Conforming to California Public Records Act

EXECUTIVE SUMMARY

When the State Bar of California became subject to the California Public Records Act (CPRA) at the beginning of this year, most, but not all, of the records associated with the Committee of Bar Examiners' (Committee) law school regulation responsibilities became public and must be provided upon request. Implementation of the new law requires that the information received and maintained under the Committee's authority to accredit and regulate law schools be treated differently than it has in the past. The *Accredited Law School Rules* and the *Unaccredited Law School Rules* both contain provisions related to what constitutes "Public Information" and what is deemed confidential, which conflict with the CPRA. To eliminate any conflicts between the CPRA and the law school rules, the Committee adopted amendments to the rules to conform them to the CPRA, subject to the approval of the Board of Trustees.

BACKGROUND

Excerpts from the current law school rules adopted by the Committee and approved by the Board of Trustees are as follows:

Accredited Law School Rules

"Rule 4.108 Public information

The following information about applicants for provisional accreditation, provisionally accredited law schools, and accredited law schools is public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Schedule of Charges and Deadlines:

- (1) public portions of applications for provisional accreditation or accreditation;
- (2) executive summaries of periodic inspection reports;
- (3) public portions of annual reports; and

(4) any other document related to accreditation that the Committee deems suitable for publication.

The following information is confidential, whether or not contained in a public record:

- (1) personal information about identifiable students;
- (2) personal information about identifiable instructors;
- (3) law school financial records; and
- (4) any other information designated confidential by the Committee.”

Unaccredited Law School Rules

“Rule 4.207 Public information

The following information about registered law schools is public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Unaccredited Law School Fees (Schedule of Charges and Deadlines):

- (1) applications for registration;
- (2) public portions of annual reports; and
- (3) notices of major changes.

The following information is confidential, whether or not contained in a public record:

- (1) personal information about identifiable students;
- (2) personal information about identifiable instructors;
- (3) law school financial records; and
- (4) any other information designated confidential by the Committee.”

DISCUSSION

As a result of the new law, information received and maintained under the Committee’s authority to accredit and regulate law schools must be treated differently than it has in the past. Although all documents in its possession are “public records” (Gov. Code § 6252(e)), the CPRA affords agencies a variety of discretionary exemptions, which they may utilize as a basis for withholding records from disclosure. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure or when another statute such as Business and Professions Code section 6060.25 applies.

The following are examples of information that fall within CPRA exemptions: For all law schools that must maintain the confidentiality of student records under the Federal Educational and Privacy Rights Act (FERPA) (20 U.S.C. § 1232g), that law expressly allows production of such information to any accrediting organization if the information is needed to perform its accrediting function. (34 C.F.R. § 99.31(a)(7).) The CPRA has an exemption covering all information and/or records, if the disclosure of such information or records is exempted or prohibited under any federal or state law, including FERPA. (Gov. Code § 6254(k).)

The CPRA also provides an express exemption preventing disclosure of information that constitutes an unwarranted invasion of personal privacy. (Gov. Code § 6254(c).) In regard to law schools’ financial information, a record may be withheld if the public interest served by not

disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code § 6255.)

Since the State Bar is now subject to the CPRA, the law school rules language relative to public records or what is considered confidential is no longer applicable. The following amendments to conform the rules are suggested:

Accredited Law School Rules

“Rule 4.108 Public information

— ~~The following~~ Release of information ~~about~~ contained in the files of applicants for provisional accreditation, provisionally accredited law schools, and accredited law schools is subject to the requirements and limitations imposed by state law. ~~public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Schedule of Charges and Deadlines:~~

- ~~(1) public portions of applications for provisional accreditation or accreditation;~~
- ~~(2) executive summaries of periodic inspection reports;~~
- ~~(3) public portions of annual reports; and~~
- ~~(4) any other document related to accreditation that the Committee deems suitable for publication.~~

— ~~The following information is confidential, whether or not contained in a public record:~~

- ~~(1) personal information about identifiable students;~~
- ~~(2) personal information about identifiable instructors;~~
- ~~(3) law school financial records; and~~
- ~~(4) any other information designated confidential by the Committee.”~~

Unaccredited Law School Rules

“Rule 4.207 Public information

— ~~The following~~ Release of information ~~about~~ contained in the files of applicants for registration and registered law schools is subject to the requirements and limitations imposed by state law. ~~public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Unaccredited Law School Fees (Schedule of Charges and Deadlines):~~

- ~~(1) applications for registration;~~
- ~~(2) public portions of annual reports; and~~
- ~~(3) notices of major changes.~~

— ~~The following information is confidential, whether or not contained in a public record:~~

- ~~—(1) personal information about identifiable students;~~
- ~~—(2) personal information about identifiable instructors;~~
- ~~—(3) law school financial records; and~~
- ~~—(4) any other information designated confidential by the Committee.”~~

Since the proposed amendments are to conform the rules to the new law, a public comment period is not necessary. If the Board Committee and Board of Trustees agree with the proposed amendments, it would be appropriate to approve them.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Rule 4.108 of the Accredited Law School Rules
Rule 4.207 of the Unaccredited Law School Rules

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

None

BOARD COMMITTEE RECOMMENDATIONS

If the Admissions and Education Committee agrees with the Committee's recommendation to approve the proposed amendments to the law school rules, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the amendments to Rule 4.108 of the *Accredited Law School Rules* and Rule 4.207 of the *Unaccredited Law School Rules* as attached hereto, which conform the law school rules to the California Public Records Act, effective immediately.