

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: February 2018 – O-401

DATE: January 29, 2018

TO: Subcommittee on Educational Standards

FROM: George Leal, Program Manager, Educational Standards

SUBJECT: **McMillan Academy of Law–Response to Notice of Compliance**

BACKGROUND

A periodic inspection of the McMillan Academy of Law (MAOL) conducted last May by Sally Perring, an educational standards consultant to the Committee of Bar Examiners (Committee), confirmed that MAOL was non-compliant as to a number of key registration requirements set forth in the *Unaccredited Law School Rules* (Rules). A report of the inspection, which factually supported the finding of noncompliance, was then received and filed by the Committee at its meeting on December 2, 2017. Based upon its receipt of the report, the Committee then issued MAOL a Notice of Noncompliance pursuant to Rule 4.260. Attachment A is the Notice of Noncompliance.

MAOL is a registered, unaccredited fixed-facility law school owned and operated by Scott McMillan, a licensed California attorney. It operates out of Mr. McMillan's law offices in La Mesa, a suburb of San Diego, and was initially registered in 2007. The law school first enrolled students in 2009 and, since then, its enrollment has been miniscule, with its last student leaving in early 2013. Since opening, only four students have ever completed MAOL's first-year curriculum and were then been able to take the First-Year Law Students' Examination; only two eventually passed the examination, one on their first attempt, but each student then transferred from MAOL to another other law school.

Since MAOL has had no students nor held any classes in almost five years, its program of legal education has long been dormant. As a result, and as confirmed by the inspection, MAOL was found noncompliant as to three important requirements: Its hard copy law library is long out-of-date since its authorities have not been updated since 2013; in the absence of any tuition income, MAOL's current and future financial viability appears questionable; and its website and written materials offer outdated and misleading information to both the general public and potential applicants.

With the issuance of the Notice of Noncompliance, and as provided by Rule 4.261, the law school was required to respond and provide evidence "demonstrating that it is in compliance or is taking steps to achieve compliance." Dean McMillan responded in a timely manner by submitting written correspondence that discusses his efforts to correct

each issue of noncompliance as well as to update his program of legal education in the hope, as expressed, of admitting students in early 2018. Attachment B is the correspondence received from Dean McMillan dated December 19, 2017.

DISCUSSION

As discussed in Dean McMillan's correspondence, MAOL has attempted to address each of the mandatory recommendations set out in the inspection report. The law school purports to have reviewed and then revised both its website and its written materials to eliminate all out of date and now incorrect information. It also claims to have revised and added all mandatory student notices, including the newest now mandated by California *Business and Professions Code* 60601.7(a). Dean McMillan is now listed as the law school's registrar and, sole corporate shareholder and director, he has represented that the law school, even in the absence of any current student tuition revenue, has sufficient capital resources through his "\$20,000 capital guarantee."

As to its still out-of-date hardcopy law library, Dean McMillan has represented that the law school is in the process of purchasing all mandatory library updates and any additional hardcopy authorities needed to be found compliant. Finally, Dean McMillan represents that the law school has retained a new member of the faculty and that it is anticipated that with the enrollment of new students, classes will resume shortly.

Based upon these and the other representations found in MAOL's response, it appears that Dean McMillan has made a good faith effort to correct all issues of the law school's noncompliance. As a result, MAOL may now be compliant as to a number of key operational requirements and as to others, most notably its library; it appears to be taking the appropriate steps to achieve compliance very shortly. However, the only means to verify whether the law school will or has achieved full compliance is to have it inspected again such that a second report can be prepared and submitted to the Committee for its further consideration as to whether MAOL's registration should be continued or whether it should be placed on probation or have its registration withdrawn.

RECOMMENDATION

Given the law school's ongoing effort to correct each issue of noncompliance noted in the Notice of Noncompliance, it is recommended that a further inspection of MAOL be conducted within the next 60 days to determine whether, as required by Rule 4.262(A), its response to the Notice of Noncompliance should be deemed satisfactory or whether, based upon that inspection and subsequent inspection report and as provided by Rule 4.263, "the Committee believes that the inspection report demonstrates that the law school is not or is not likely to be in compliance with these rules" such that it "will notify the law school that it recommends probation or withdrawal of registration."

PROPOSED MOTION

Should the Subcommittee agree with this recommendation, the following motion is suggested:

Move that the response of the McMillian Academy of Law to the Notice of Noncompliance issued on December 2, 2017 be received and filed; that a further inspection of the law school be conducted within the next 60 days to determine whether, under Rule 4.262(A), its response should be deemed satisfactory or whether, based upon that inspection and subsequent report and as provided by Rule 4.263, the Committee is able to determine that the law school is not or is not likely to be in compliance with these rules so that it may then notify the law school that it recommends probation or withdrawal of its registration.